

PROCUREMENT DIVISION

Instructions: Read the checklist in its entirety before you print the Contract. This Checklist is a guide to assist you in preparing and submitting your Contract. All items that are marked must be completed and returned with the Contract.

1.	<input checked="" type="checkbox"/>	Review the contract for accuracy.
2.	<input checked="" type="checkbox"/>	Provide the following: <div> <div></div> Federal Tax Identification Number or Social Security Number (last 4 digits) <div></div> Data Universal Numbering System (DUNS) Number </div>
3.	<input checked="" type="checkbox"/>	Print one (1) set.
4.	<input type="checkbox"/>	IRS Federal Tax Exemption <div> <div></div> Submit one copy of the IRS Federal Tax Exemption 501 (c) (3) and Tax-Exempt Status. </div>
5.	<input checked="" type="checkbox"/>	Sign and notarize with original signatures on last page. <div> <div></div> All documents requiring the signature of the authorized representative for the Vendor must be an original signature. <div></div> The same representative must sign each copy of the Overdue Tax Letter, Conflict of Interest, E-Verify, State Certification and Contract. </div>
6.	<input type="checkbox"/>	E-Verify Declaration <div> <div></div> Complete the E-Verify Declaration. <div></div> Sign and Date. <div></div> Signature must be an original signature of the authorized representative for the Vendor. <div></div> Include original signed E-Verify Declarations. <div></div> Insert in E-Verify. </div>
7.	<input type="checkbox"/>	Overdue Taxes Section <div> <div></div> Prepare the letter on your letterhead/stationery. All letterhead must be the same. <div></div> Make the necessary changes to reflect your company. <div></div> Insert the name(s) of the authorized official(s) appropriate for your company. <div></div> Include your original signature. <div></div> Insert an Overdue Tax Letter. </div>
8.	<input checked="" type="checkbox"/>	Conflict of Interest Section <div> <div></div> Insert the Conflict of Interest Policy on your letterhead/stationary. <div></div> Include your original signature. </div>
9.	<input checked="" type="checkbox"/>	State Certifications <div> <div></div> Complete the State Certification Section. <div></div> Include your original signature. <div></div> Check the appropriate box. </div>
10.	<input checked="" type="checkbox"/>	Submit one copy of the most current Certificate of Insurance for the item(s) marked. <div> <div></div> Mecklenburg County must be listed as the holder and as additional insured with Commercial General Liability on the certificate. <div> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Automobile Liability <input checked="" type="checkbox"/> Professional Errors & Omissions <input type="checkbox"/> Workers' compensation (If less than three employees a Statement on your company letterhead is required.) <input checked="" type="checkbox"/> Professional Liability <input type="checkbox"/> Network Security & Privacy Liability <input type="checkbox"/> Fidelity Bond </div> </div>
11.	<input type="checkbox"/>	Submit the required document specific to you or your company. <div> <div></div> Annual Financial Compilation <div></div> Annual Financial Statement </div>
12.	<input type="checkbox"/>	Submit one copy of the most current Regulatory Licensure.
13.	<input checked="" type="checkbox"/>	Vendor Packet <div> <div></div> Complete the required forms and submit as noted in the instructions. </div>
14.	<input type="checkbox"/>	Submit one copy of the most current Articles of Incorporation or Certificate of Authority.
15.	<input type="checkbox"/>	Copies of the contract and facsimiles will not be accepted.
16.	<input checked="" type="checkbox"/>	Return contract signed as an original and notarized. <div> <div></div> An electronic version of the contract will be forwarded to you. </div>
17.	<input type="checkbox"/>	Please follow this link to the Mecklenburg County MeckEDU Training website. <div> <div></div> Complete the trainings within five (5) days of receipt of Contract. <div></div> Any employee that provides services under this Contract must complete the trainings. </div>
18.	<input checked="" type="checkbox"/>	Physical Address: Mecklenburg County Government Procurement Division Financial Services Department 3205 Freedom Drive, Suite 101 Charlotte, NC 28208 (You may drop off the completed contract at the address above.)
<ul style="list-style-type: none"> Vendor Name _____ Date Returned _____ Attorney Reviewed/Approved Date _____ Department Director/Project Manager or Designee Reviewed/Approved Date _____ Contract Manager Date Reviewed _____ Procurement Analyst Independent Contractor Checklist Completed <input type="checkbox"/> 		

Rev 08/2018



STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

MASTER CONTRACT

DESCRIPTION OF PURCHASE

This Master Contract (the "Contract") is entered into as of this _____ day of _____, by and between _____, a corporation doing business in North Carolina (the "Company"), and Mecklenburg County, a political subdivision of the State of North Carolina (the "County").

Address:

Telephone:

Contact Person:

TERM OF CONTRACT: _____ – _____ SPELL MONTH

Statement of Background and Intent

WHEREAS, the County issued a Request for Proposals for _____, Number _____ dated _____ requesting proposals from qualified vendors to provide the County with _____ System per County requirements. This Request for Proposals, together with all attachments and amendments, is referred to herein as the "RFP".

In response to the RFP, the Company submitted to the County a proposal dated _____. This proposal, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."

The County and the Company have negotiated and now desire to enter into an arrangement for the Company to design, supply, install, customize, configure, test, commission and maintain a _____ System for the County, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Contract, the parties agree as follows:

AGREEMENT

1. EXHIBITS. The following Exhibits and Appendices are attached to this Contract and incorporated into and made a part of this Contract by reference:

- Exhibit A: Price Schedule and List of System Components
- Exhibit B: Milestone Plan
- Exhibit C: Scope of Implementation Services
- Exhibit D: Project Schedule
- Exhibit E: Scope of Maintenance Services
- Exhibit F: License
- Exhibit G: Business Associate Agreement

Each reference to the Contract shall be deemed to include all Exhibits and Appendices. Any conflict between language in an Exhibit or Appendix to this Contract and the main body of this Contract shall be resolved in favor

of the main body of this Contract. Each reference to _____ in the Exhibits and Appendices shall be deemed to mean the Company.

2. DEFINITIONS. The following terms shall have the following meanings for purposes of this Contract (including all Exhibits):

- 2.1. **Acceptance** refers to the receipt and approval by the County of a Deliverable or Service in accordance with the acceptance process and criteria set forth in this Contract.
- 2.2. **Affiliates** means all departments or units of the County and all other governmental units, towns, boards, committees or municipalities for which the County processes data or performs Services that involve the System.
- 2.3. **Company Software** and _____ shall be used interchangeably to mean all pre-existing software owned by the Company or any of its Related Entities which the Company provides or is required to provide under this Contract, and all New Releases and New Versions of the foregoing.
- 2.4. **Current Release** means the latest version of the Software offered for general commercial distribution at a given point in time, including all New Releases.
- 2.5. **Customizations** means all newly-developed software created by the Company and/or its subcontractors pursuant to this Contract, including but not limited to all interfaces between different components of the System and between the System and other systems. Customizations will not include New Releases and New Versions that become part of the company Software.
- 2.6. **Defect** means any failure of the System or any component thereof to fully conform to the Specifications and Requirements. A non-conformity is not a Defect if it results directly from the County's improper use or damage, unless it is reasonably likely that such non-conformity would have occurred on that or another occasion even without the County's improper use or damage.
- 2.7. **Deliverables** means all tasks, reports, information, designs, plans and other items that the Company is required to complete and deliver to the County in connection with this Contract, other than the Products.
- 2.8. **Documentation** means all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the System or any component thereof, and which are published or provided to the County by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the System.
- 2.9. **Effective Date** means the date stated in the first sentence of this Contract.
- 2.10. **Hardware** means all hardware, equipment and materials that the Company actually provides or is required to provide under the terms of this Contract (whether now or in the future).
- 2.11. **Implementation Services** means the Services described in **Exhibit C**.
- 2.12. **License** means the license agreement attached to this Contract as **Exhibit F**.
- 2.13. **Maintenance Services** means the Services described in **Exhibit E**.
- 2.14. **Milestones** means the benchmarks of performance (consisting of an identified deadline for the completion of specific services and/or the acceptance of identified Deliverables), as specified in **Exhibit B** and the Project Plan.
- 2.15. **New Version** means any products, parts of products, improvements, additions or materials not included in the Products as of the Effective Date that significantly modify the Products to provide a function or feature not originally offered or an improvement in function. New Versions are typically identified by a new version number that changes the number left of the decimal point. For example, a change from Version 5.0 to Version 6.0 would likely represent a New Version.
- 2.16. **New Release** means any change issued by the Company or its subcontractors to the Products or the Documentation that is not a New Version. New Releases are typically identified by changing the number to the right of the decimal point (e.g., going from Version 5.1 to 5.2).
- 2.17. **Project** refers to the project for the Company to design, supply, install, configure, test, commission and maintain the System for the County in accordance with the terms and conditions in this Contract.
- 2.18. **Project Plan** means the detailed plan for implementation of the System as described in **Exhibit C**, in the form accepted in writing by the County.
- 2.19. **Products** means all Software and all Hardware (both as herein defined).

- 2.20. **Project Schedule** means the Project Schedule attached to this Contract as **Exhibit D**.
- 2.21. **Related Entity** means any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Company, including but not limited to any parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.
- 2.22. **Services** means all services that the Company provides or is required to provide under this Contract, including all Implementation Services and all Maintenance Services now or in the future.
- 2.23. **Software** means: (i) all Company Software; (ii) all Customizations; (iii) all Third Party Software; and (iv) all New Releases and New Versions of any of the foregoing.
- 2.24. **Source Code** means the human readable form of a computer program and all algorithms, flow charts, logic diagrams, structure descriptions or diagrams, data format or layout descriptions, pseudo-code, code listings (including comments), and other technical documentation relating to such program.
- 2.25. **Specifications and Requirement** means all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products or System which are set forth or referenced in: (i) this Contract, including the Appendix; (ii) the main body of this Contract; (iii) other Exhibits to this Contract; (iv) the Documentation; and (v) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Products or the System. Any conflict between the requirements or specifications referenced in subparts (i), (ii) (iii) (iv) or (v) of this definition shall be resolved in the order of priority in which they are listed; provided, however, that the County may, at its option, disregard the order of listing to resolve any such conflicts in a manner that takes advantage of new or enhanced functionality or features.
- 2.26. **System** means the System to be designed, supplied, installed, configured, tested, commissioned and maintained by the Company under this Contract, including but not limited to all Products.
- 2.27. **System Acceptance** means acceptance by the County of the complete and functional System as provided in **Exhibit C** of this Contract.
- 2.28. **Third Party Software** means all software included within the System or required for the System to function in full compliance with the Specifications and Requirements that is provided by the Company under this Contract and was not manufactured, developed or otherwise created by the Company, any Related Entity of the Company, or any of the Company's subcontractors.
- 2.29. **Warranty Period** means the twelve (12)-month period following System Acceptance by the County.
- 2.30. **Workaround** means a reasonable change in the procedures followed or data supplied to avoid a Defect that does not impair the performance of the System or increase the cost of using the System.
- 2.31. **Work Product** means the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3. **GENERAL DESCRIPTION OF SERVICES.** The Company shall provide the Implementation Services described in **Exhibit C** and any other design, development, supply, installation, consulting, System integration, software installation, project management, training, technical and other Services necessary to deliver and implement the System so that it is in production at the County in full compliance with the Specifications and Requirements on or before . The Company shall also provide the Maintenance Services described in **Exhibit E** at no cost to the County after the initial one (1) year warranty after System Acceptance. The Company shall perform the Implementation Services on site at the County's facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the County.

4. **COMPENSATION.**

- 4.1. **SYSTEM PURCHASE PRICE.** The County shall pay the Company a fixed price not-to-exceed of \$ (the "Purchase Price") as full and complete consideration for the satisfactory performance of all the requirements of this Contract other than Maintenance Services beyond the Warranty Period ("Extended Maintenance Services"). The total amount paid by the County to the Company under this Contract shall

not exceed \$. This amount consists of: ☐ Federal Funds (CFDA #), ☐ State Funds, ☐ County Funds and/or ☐ Other Funds.

The Purchase Price is allocated to the Products and Services in accordance with **Exhibit A**, and shall be payable in accordance with **Exhibit B** (the "Milestone Plan"). The amount of the Purchase Price referenced in this Section constitutes the total fees, charges and expenses payable to the Company under this Contract for everything other than the Extended Maintenance Services, and shall not be increased except by a written instrument duly executed by the County, which expressly states that it amends this Section of this Contract.

4.2 **MILESTONE PAYMENT PLAN.** The Company shall invoice the County for the Purchase Price in accordance with the Milestone Plan attached as **Exhibit B**. The Company shall not invoice the County for any Products or Services within a particular Milestone until all Products and Services required in connection with that Milestone have been fully delivered, completed and accepted by the County.

4.3 **MAINTENANCE FEES FOR EXTENDED MAINTENANCE.** The Maintenance Services shall be provided to the County at no charge for a period of one (1) year after System Acceptance (the "Warranty Period"). After the Warranty Period, the County shall have -three (3) -one (1) year options to purchase Extended Maintenance Services from the Company at a total price of \$ per year for hardware, system maintenance and software, (the "Maintenance Fees." The County shall be entitled to exercise its option to buy Extended Maintenance Service for a given one (1)-year option period by: (a) providing written notice to the Company at any time prior to or within sixty days following the beginning of such one-year option period; or (b) payment of the Company's invoice for such one-year option period. The Company shall invoice the County for Maintenance Fees on an annual basis, but not more than sixty (60) days before the one (1)-year extended maintenance term being billed for begins.

Any bona fide increase in the cost of providing the Projects and/or Services must be submitted in writing to the County Project Manager prior to implementation, see Section .

4.4 **INVOICING.** As consideration for the performance of the Specifications and Requirements herein, the County shall pay the Company the sum(s) stated in the Pricing Sheet attached hereto and incorporated herein.

4.4.1 Invoices shall only be submitted after Acceptance of the Product and/or Service by the County. Invoices will be submitted to the County Project Manager at the email address noted in Section .

4.4.2 Each invoice submitted shall include line item detail of all Products and/or Services delivered or performed under the terms of this Contract.

4.4.3 Payment of invoices shall be due within thirty (30) days after the later of: (a) receipt of an undisputed properly submitted invoice by the County; or (b) Acceptance by the County of the Milestone to which the invoice applies. For Extended Maintenance Service fees, only subpart (a) of the preceding sentence shall apply.

4.4.4 The County shall not be charged for any Services or other work performed by the Company prior to the Effective Date.

4.4.5 The Company agrees to utilize the available County procurement system for submitting invoices electronically and to accept payment via a procurement credit card (i.e. Visa, MasterCard, etc.) or Electronic Funds Transfer (EFT) as desired by the County.

4.4.6 All purchase orders shall be invoiced separately.

4.4.7 The County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, the County will not pay late fees on any charges under this Contract.

4.4.8 For Extended Maintenance Service fees, only subpart (a) of the preceding sentence shall apply.

4.5 **ADDITIONAL PURCHASES.** For a period of twenty-four (24) months after the date of this Contract, the County shall have the right to purchase and the Company shall sell to the County all Hardware and Software listed in **Exhibit A** as optional items at the prices set forth in **Exhibit A**.

4.6 **NO ADVANCED PAYMENT.** No advance payment shall be made for the Products and/or Services furnished by the Company pursuant to this Contract.

- 4.7 **DISPUTED CHARGES.** If the County disputes any portion of the charges on any invoice received from the Company, the County shall inform the Company in writing of the disputed charges. Once the dispute has been resolved, the Company shall re-invoice the County for the previously disputed charges, and per any resolution between the County and the Company, the County shall pay those charges in full at that time.
- 4.8 **TRAVEL EXPENSES AND TRAVEL UPGRADES.** The County has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless specified and agreed to by both parties. If reimbursement is required by the County:
- 4.8.1 All travel expenses must be in accordance with the County Travel Policy and Procedures and must be preapproved in writing by the County.
- 4.8.2 The County will only pay coach/economy rate airline fares; and
- 4.8.3 The Company's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the forgoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits-based upgrades, or upgrades paid for by the Company so long as the County is not charged for or asked to reimburse the upgrade charge, or the value of the miles, points or credits used.
5. **TERM.** This Contract shall commence on the Effective Date and shall continue in effect for Choose an item.unless the Contract is sooner terminated in accordance with the terms as provided herein. This Contract will remain in effect with regard to any SOW or purchase order already in effect as of the date terminated unless such SOW or purchase order is terminated as provided herein.
6. **TIME IS OF THE ESSENCE.** Time is of the essence in having the Company perform all Services and deliver all Products within the time frames provided by this Contract and the Project Plan, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.
7. **PRODUCT PURCHASE AND DELIVERY.** As part of the Purchase Price, the Company shall provide all Software, labor, equipment and materials required by the County in order for the to perform in accordance with the Specifications and Requirements, except for those items that are specifically listed in **Exhibit C** as a County responsibility.
- 7.1 **DELIVERY SCHEDULE.** The Company shall deliver the Products by the delivery dates set forth in the Project Schedule, as may be modified by the parties' mutual consent in the Project Plan. Delivery shall be by the County unless otherwise agreed in writing by the County.
- 7.2 **TITLE/RISK OF LOSS.** Except for loss or damage occurring in connection with the Company's performance of Services under this Contract, title and risk of loss of all Hardware shall pass to the County upon delivery of the Hardware to the County's premises.
- 7.3 **DELIVERY AND INSTALLATION COSTS.** All delivery and installation costs associated with the Hardware and the Software shall be borne by the Company.
- 7.4 **SOFTWARE LICENSE FOR EMBEDDED SOFTWARE.** The Company grants to the County the right to use all software which is embedded in or included with the Hardware ("Embedded Software") to the full extent necessary for the County to use the Hardware in the manner contemplated by this Contract. The County agrees to be bound by the terms and limitations of any licenses for Embedded Software which have been: (i) provided to the County in writing preceding delivery of such Hardware; and (ii) accepted by the County in writing. Notwithstanding the foregoing, in no event shall any terms or conditions of such licenses restrict the County from using the Hardware in the manner contemplated by this Contract, nor shall such terms or conditions in any way modify the County's rights under the License.
- 7.5 **TRANSFER OF WARRANTIES.** Without limiting the Company's obligations to provide Warranty Services or the Maintenance Services, the Company hereby assigns and transfers to the County all of the Company's warranties from the Company's suppliers covering the Hardware, the Embedded Software and Third Party Software. The Company will provide copies of such warranties to the County with delivery of the

applicable Hardware or Software. While the Company shall be entitled to make arrangements to have such warranty work performed by the supplier, nothing herein shall relieve the Company of its obligation to correct Defects in the Hardware or the Software or to meet the time deadlines provided in this Contract for the correction of such Defects.

- 7.6 **REPLACEMENT EQUIPMENT.** The Company shall execute all documents necessary to evidence the County's title to the Hardware, including Hardware replaced pursuant to warranty provisions or pursuant to the Maintenance and Support Contract.
- 7.7 **SOURCE CODE.** Company shall cause the Source Code for all Software, New Releases and New Versions to be delivered to the source code escrow agent identified in the Source Code Escrow Contract, at the times set forth therein. The County shall be given such Source Code under the conditions stated in the Source Code Escrow Contract. The Company shall deliver the Source Code for all Customizations to the County prior to System Acceptance. The Company shall deliver the Source Code for all New Releases and New Versions to Customizations to the County within ten (10) days after delivery of each New Release and New Version.
- 7.8 **CHANGES.** In the event changes to the Services (collectively "Change"), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references this Contract (a "Change Statement"). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all Milestones and delivery dates and any associated price.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party's Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions. Changes that involve or increase in the amounts payable by the County may require execution by a Department Director, the County Manager, or an Assistant County Manager; depending on the amount. Some increases may also require approval by the Board of County Commissioners.

8. **REGENERATION OF LOST OR DAMAGED DATA.** With respect to any data which has been lost or damaged due to an act or omission of the Company or its subcontractors, the Company shall, at its own expense: (a) promptly replace or regenerate such data from the County's machine-readable supporting material, or (b) obtain a new machine-readable copy of lost or damaged data from the County's data sources. The Company shall further reload and restore such data at the Company's expense. The Company shall not be responsible for any expenses that are the result of the failure of the County to maintain backup data in accordance with the County's regular schedule.
9. **NEW TECHNOLOGY.** The parties recognize that technology may change during the term of this Contract. Accordingly, the parties agree as follows:
- 9.1 The Company shall provide the County with prompt written notice of all Upgrades, Enhancements and modifications to the Products or Services that become available during the term of this agreement (the "New Technology").
- 9.2 Unless specified in writing by the County in a specific instance, all Products provided by the Company will be the latest, most recent version available as of the time of installation. The Company will schedule installation of all Products as late in the process as is reasonably practicable to meet the Project Plan deadlines. Unless specified in writing by the County in a specific instance, the Company will continually update the Software after installation at no additional cost and it shall be a condition of System Acceptance that all Software be the latest, most current version available as of the date of System Acceptance.

- 9.3 If the Company causes a delay in the Project of six months or more, it shall be a condition of System Acceptance (at the County's option) that the Hardware is the latest, most recent version available as of six months prior to the date of System Acceptance.
- 9.4 Notwithstanding anything contained in this Contract to the contrary, the County shall have the option to reject proposed New Technology and to accept less than the most current version of the Products by providing written notice to the Company.
- 9.5 The Company shall make the New Technology available to the County at no additional cost if the required by this Contract, or if New Technology is generally commercially available to the Company's customers at no additional cost. Notwithstanding the foregoing, there shall be no additional charges for providing the most recent version of the Hardware as required by **Section 9.2 or 9.3.**
- 9.6 The Company shall provide additional details and estimated prices to the County at the request of the County if the County wants to consider further the possible addition of the New Technology.
- 9.7 Notwithstanding anything contained herein to the contrary, neither the acceptance of proposed New Technology by the County nor the amendment of this Contract to incorporate New Technology shall relieve the Company from its obligations under this Contract to satisfy the Specifications and Requirements.

10. REPRESENTATIONS AND WARRANTIES OF COMPANY.

10.1 SPECIFIC WARRANTIES. Company represents, warrants and covenants that:

- (a) For a period of twelve (12) months after System Acceptance (the "Warranty Period"), the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including any changes to such laws, etc.).
- (b) All Products and Services delivered after System Acceptance shall fully conform to the Specifications and Requirements for a period of one (1) year after Acceptance of such Product or Service by the County.
- (c) For as long as the County exercises its options to purchase Extended Maintenance Services, the System will fully comply with the Specifications and Requirements, and all federal, state and local laws, regulations, codes and guidelines that apply to it (including changes to such laws, etc.).
- (d) All Software provided by the Company or its subcontractors is and will be free of viruses, worms and Trojan horses, and any code designed to disable the Software because of the passage of time, alleged failure to make payments due, or otherwise (except for documented security measures such as password expiration functions);
- (e) In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:
 - 10.1.e.1 All Software and Documentation provided by the Company or its subcontractors will have sufficient information and capabilities to enable the County to permit the public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System; and
 - 10.1.e.2 All Software and Documentation provided by the Company or its subcontractors will have sufficient information to enable the County to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The Company agrees that the County may copy and disclose the information listed above in response to requests for database information under the North Carolina General Statutes.
- (f) All Documentation for the Products and the System is and will be in all material respects complete and accurate, and will enable data processing professionals and other County employees with

ordinary skills and experience to utilize the Products and the System for the expressed purpose for which they are being acquired by the County;

- (g) All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- (h) Neither the Services, nor the Products nor any Deliverables provided by the Company under this Contract will violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third party rights (including without limitation non-compete agreements); and
- (i) All Hardware shall be delivered and shall remain free and clear of all liens and encumbrances. The Company shall not place or allow to be placed on the Software any third party lien or encumbrance of any kind at any time which could conceivably interfere with the County's use of the Software or the Company's maintenance of the Software.

Prior to System Acceptance, the Company will correct all Defects in the System and the components thereof within the time frames set forth in **Exhibit C** and the Project Plan. During the Warranty Period and at all times during which the County has purchased Extended Maintenance Services, the Company will correct all Defects and provide Maintenance Services pursuant to the **Exhibit E**. If the Company breaches the warranty set forth in **Section 10.1(a)**, the County, without limiting any other remedies it may have under this Contract or at law, shall be entitled to an immediate refund of all amounts paid to the Company or its subcontractors or licensors under this Contract.

10.2 **GENERAL WARRANTIES.**

- 10.2.1 Company is a corporation qualified to do business and in good standing under the laws of the state of North Carolina.
- 10.2.2 Company has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract.
- 10.2.3 The execution, delivery, and performance of this Contract have been duly authorized by the Company.
- 10.2.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Company to enter into and perform its obligations under this Contract.
- 10.2.5 In connection with the Company's obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses.
- 10.2.6 The Company shall not violate any Contract with any third party by entering into or performing this Contract.
- 10.2.7 Company warrants that all Products and/or Services provided will conform to the Specifications and Requirements of this Contract.
- 10.2.8 The Products and/or Services provided by the Company under this Contract will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third party rights (including without limitation non-compete Contracts).

10.3 **SPECIFIC WARRANTIES.** In addition to the above referenced warranties, the Company shall represent, warrant and covenant the specific warranties attached hereto and incorporated herein by Exhibit.

10.4 **BREACH OF WARRANTIES.** If the Company breaches any of the warranties, the County, without limiting any other remedies it may have under this Contract or at law, shall be entitled to an immediate refund of all amounts paid to the Company or its subcontractors or licensors under this Contract.

10.5 **ASSIGNMENT OF WARRANTIES FOR THIRD PARTY PRODUCTS.** Without limiting the Company's obligations to provide warranty services or maintenance services, the Company hereby assigns to the County all the Company's warranties from the Company's suppliers covering any Third-Party product delivered under this Contract. The Company will provide copies of such warranties to the County at the completion of Services. While the Company shall be entitled to make arrangements to have such warranty

work performed by the supplier, nothing herein shall relieve the Company of its obligation to correct Defects or to meet the time deadlines provided in this Contract for the correction of such Defects.

11. REMEDIES.

- 11.1 **RIGHT TO COVER.** If the Company fails to meet any completion date or resolution time set forth, due to no fault of the County, the County may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:
- i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
 - ii. Deduct any and all expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Company and, should the County's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.
- 11.2 **RIGHT TO WITHHOLD PAYMENT.** The County reserves the right to withhold any portion, or all, of a scheduled payment if the Company fails to perform under this Contract until such breach has been fully cured.
- 11.3 **SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.** The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Products and/or Services required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the County obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches this Contract.
- 11.4 **SETOFF.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Contract.
- 11.5 **LIQUIDATED DAMAGES.** The County and the Company acknowledge that the County will incur damages for inconveniences and delay if the Company fails to meet the deadlines set forth by Contract (excluding any damages which the County may incur in the event it elects to terminate this Contract). The parties further acknowledge that the damages that might be reasonably anticipated to accrue as a result of such failure are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees that it will pay Liquidated Damages in the amount of \$300 per day for each day the Company is late in meeting a Completion Date set forth in the Project Schedule or the Project Plan in accordance with the schedule attached hereto and incorporated herein by Exhibit.
- 11.5.1 Liquidated damages may be assessed or waived at the discretion of the County. No failure on the County's part to timely assess Liquidated Damages for any given incident or set of incidents shall be considered either a waiver of such damages or a modification of this Contract. Waiver of Liquidated Damages for one particular violation or set of violations shall not constitute a waiver of damages for any violation not specifically stated in such waiver.
- 11.5.2 The Liquidated Damages set forth herein are not intended to compensate the County for any damages other than the inconvenience and loss of use or delay of the Products, System and/or Services. The existence or recovery of such Liquidated Damages shall not preclude the County from recovering other damages which the County can document as being attributable to a failure to meet one or more deadlines including but not limited to the cost of internal staff hours or amounts paid to third parties (such as other vendors or independent Contractors) as a result of such failure.
- 11.5.3 Notwithstanding anything contained herein to the contrary, the County will not impose Liquidated Damages for any failure that could not have been prevented through the exercise of reasonable precaution or that is due to a Force Majeure Event.

- 11.5.4 It is the responsibility of the Company to notify the County immediately should the Company believe that Liquidated Damages should not be assessed in a particular situation and to provide at the same time all information in which the company believes justifies a waiver. The Company agrees that failure to provide such notice and information within twenty-four (24) hours after a particular incident occurs will constitute a waiver of any right the Company may have to contest the imposition of Liquidated Damages in connection with such incident.
- 11.5.5 Liquidated Damages shall be assessed via withholding of the proper total amount from the payment due to the Company for that particular billing period. The assessment of Liquidated Damages shall not limit the County's right to exercise any termination options it may have under this Contract.
- 11.6 **OTHER REMEDIES.** Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 11.7 **NO LIENS.** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.

12. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES. Throughout the duration of this Contract, the Company shall identify and request in writing from the County Project Manager all County resources that may reasonably be required by the Company to perform the Services (the "County Resources"), including all information, County staff, equipment, facility or materials needed by the Company. The Company shall request County Resources far enough in advance to allow adequate planning and availability on the County's part and to avoid unnecessary expense or overtime. Notwithstanding the foregoing, the Company shall not be entitled to request that the County provide County Resources other than those identified as a County responsibility in **Exhibit C** (with respect to the Implementation Services) or **Exhibit E** (with respect to the Maintenance Services) unless the County can do so at no significant cost. If the County Project Manager fails to provide within a reasonable time period a County Resource that this Contract requires the County to provide, the Company will notify the responsible County Project Manager of such failure. The Company shall not be relieved of any failure to perform under this Contract by virtue of the County's failure to provide any County resource: (i) that the Company failed to identify and request in writing from the County pursuant to this Section; or (ii) which the County is not required to provide pursuant to this Contract. To the extent the Company is excused from performance under the terms of this Section, the Company will only be excused for delays that occur after it has given notice to the County Project Manager of the County's failure.

- 12.1 **REMOVAL, REPLACEMENT AND PROMOTION OF COMPANY PERSONNEL.** The County will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the County. The County shall be entitled to exercise such right in its sole discretion by providing written notice to the Company.

The County must approve in writing any hires or transfers of personnel to "Key Personnel" positions on the Project, and the County shall have the right to interview all personnel that the Company proposes to hire or transfer to such positions. As used in this Contract, the term "Key Personnel" shall mean the Company Project Manager, and any other personnel of the Company or its subcontractors who are identified as Key Personnel in an Exhibit to the Contract, or whom the County from time to time designates in writing to the Company as fulfilling a key role in the Project. Unless approved by the County in writing, the Company will not: (i) remove the Company's Key Personnel from the Project or permit its subcontractors to remove Key Personnel from the Project; or (ii) materially reduce the involvement of the Company's Key Personnel in the Project or allow its subcontractors to materially reduce the involvement of Key Personnel in the Project.

The Company will replace any personnel who leave the Project with equivalently qualified persons. The Company will replace such personnel as soon as reasonably possible, and in any event within thirty days after the Company first receives notice that the person will be leaving the Project.

If the Company gets more than seven (7) days behind in completing any Deliverable required by this Contract or the Project Plan, the Company will devote all personnel assigned to the Project to working on the Project on a first priority basis.

As used in this Contract, the term "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

13. BACKGROUND CHECKS.

13.1 BACKGROUND CHECKS. Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the "Background Checks"). The background checks must demonstrate the worker has not been convicted of any crime against a person, crimes against property where intent is an element, any drug or gambling related offense, or any motor vehicle offense related to the applicable position. For any individuals who will have responsibility for initiating or affecting financial transactions, or access to financial information, social security numbers, confidential or proprietary information, as determined by the County, the background checks must demonstrate the worker has not been convicted of financial wrongdoing including, but not limited to, embezzlement, fraud, money laundering, theft or others acts indicating dishonesty. Each background check must include:

13.1.1 A criminal conviction record check from the states and counties where the person lives or has lived from the age of 18 to date;

13.1.2 If the Company undertakes a new project under this Contract, then prior to commencing performance of the project the Company shall perform a background check for each. The Company must follow all state and federal laws when conducting background checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same. The County may conduct its own background checks on principals of the Company as deemed appropriate. By operation of the public records law, background checks conducted by the County are subject to public review upon request.

The Company agrees to indemnify the County for any liability or harm resulting from the Company's failure to conduct background checks and/or obtain positive references and/or background on its employees, contractors, subcontractors, and/or agents assigned to preform services for the County. The Company further agrees to indemnify the County for any liability or harm resulting from the Company's failure to review or remove employees as appropriate when related to the results of a background check conducted on its employees, independent contractors, subcontractors, and/or agents assigned to perform services for the County. The Company further agrees to indemnify the County for any liability or harm, including fines, penalties, attorneys' fees, etc., resulting from the Company's violation of any state or federal laws when conducting background checks. Company further agrees to indemnify the County for any liability from Company's failure to discharge its obligations as forth herein.

14. TRANSITION SERVICES UPON TERMINATION. Upon termination or expiration of this Contract, the Company shall cooperate with the County to assist with the orderly transfer of the Services, functions and operations provided by the Company hereunder to another provider or to the County as determined by the County in its sole discretion. The transition services that the Company shall perform if requested by the County include but are not limited to:

14.1 Working with the County to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services;

14.2 Notifying all affected service providers and subcontractors of the Company of transition activities;

14.3 Performing the transition service plan activities;

14.4 Answering questions on an as-needed basis; and

14.5 Providing such other reasonable services needed to effectuate an orderly transition to a new system.

15. NOTICES.

- 15.1 **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below.
- 15.2 **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- 15.3 **CHANGE OF NOTICE ADDRESS.** Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.
- 15.4 **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

For the County:

- 13.1.1.1 Name of Procurement Analyst:
- 13.1.1.2 Telephone Number: Fax:
- 13.1.1.3 E-mail:
- e. Name of Program Project Manager:
- f. Telephone Number: Fax:
- g. E-mail:
- h. Address of Department:

For the Company:

- a. Name of Contract Administrator:
- b. Telephone Number:
- c. E-mail:
- d. Name of Program Contact: Same as above.
- e. Telephone Number: Fax:
- f. E-mail:
- g. Program Name, Location, and Mailing Address:
- h. Status: ☒ BUSINESS
- i. Federal Tax Identification Number:
- j. DUNS Number: ☒ Yes ☐ No

16. INTELLECTUAL PROPERTY.

- 16.1 **COMPANY OWNERSHIP.** The Company shall have exclusive ownership of intellectual property rights in all Company Software and related Documentation, including but not limited to all copyrights, patents and trade secrets (collectively "Company Intellectual Property"). The Company grants the County a perpetual, royalty-free, non-exclusive license to use and copy the Company Intellectual Property for all purposes of the County and the Affiliates in accordance with the terms of the License.
- 16.2 **COUNTY OWNERSHIP.** The County shall have exclusive ownership of all intellectual property rights in all Customizations, Deliverables and other Work Product created by the Company or its subcontractors in connection with this Contract, including all modifications, Updates, Enhancements and Documentation relating thereto, and including but not limited to all copyrights, patents and trade secrets (collectively "County Intellectual Property"). The Company hereby assigns and transfers all rights in the County Intellectual Property to the County. The Company further agrees to execute and deliver such assignments and other documents as the County may later require perfect, maintaining and enforcing the County's rights as sole owner of the County Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the County as attorney in fact to execute all such assignments and instruments and agree that its appointment of the County as an attorney in fact is coupled with an interest and is irrevocable.

The County Intellectual Property shall not include Deliverables created by the Company for other customers prior to the date of this Contract, provided that the Company shall notify the County in writing of any Deliverables that are not County Intellectual Property at the time it submits such Deliverables. The County grants the Company a royalty-free, non-exclusive license to use and copy the County Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the County Intellectual Property for other purposes without the County's prior written consent, and shall treat the County Intellectual Property as "Confidential Information" under the Confidentiality Contract.

- 16.3 **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as Confidential Information under the Confidentiality Agreement all data provided by or processed for the County in connection with this Contract or use of the Software (including metadata). Such data shall remain the exclusive property of the County. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the County in any manner except that contemplated by this Contract.

17. APPLICABILITY, AMENDMENTS, AND ADDITIONS TO CONTRACT.

- 17.1 **ENTIRE CONTRACT.** This Contract constitutes the entire Contract between the parties with respect to the subject matter herein. There are no other representations, understandings, or Contracts between the parties with respect to such subject matter. This Contract supersedes all prior Contracts, negotiations, representations and proposals, written or oral.
- 17.2 **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses, or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of this Contract can be determined and effectuated. If the provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 17.3 **TITLES OF SECTIONS.** The section headings inserted herein are for convenience only and are not intended to be used as aids to interpretation and are not binding on the parties.
- 17.4 **CONSTRUCTION OF TERMS.** Each of the parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties.
- 17.5 **GOVERNING LAW AND VENUE.** As required by North Carolina General Statutes 22B-2 and 22B-3, North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflict of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 17.6 **GOVERNMENTAL IMMUNITY.** The County to the extent it applies does not waive its governmental immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.
- 17.7 **BINDING NATURE AND ASSIGNMENT.** This Contract shall bind the parties and their successors and permitted assigns. Neither Party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Contract, a Change in Control, as defined herein shall constitute an assignment.
- 17.8 **CHANGE IN CONTROL.** In the event of a Change in Control (as defined herein) of the Company, the County shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the County within ten days of the occurrence of a change in control. As used in this Contract, "Change in Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company.

- 17.9 **SURVIVAL OF PROVISIONS.** Those Sections of this Contract and the Exhibits which by their nature would reasonably be expected to continue after the termination of this Contract shall survive the termination of this Contract, including but not limited all definitions and each of the following:

Section 2	Definitions
Section 4.5	Additional Purchases
Section 5	Term
Section 7.4	Software License for Embedded Software
Section 7.5	Transfer of Warranties
Section 7.6	Replacement Equipment
Section 10	Representations and Warranties of Company
Section 15	Notices
Section 16	Intellectual Property
Section 17	Applicability, Amendments, And Additions To Contract
Section 18	Termination
Section 21	Audit
Section 24	Indemnification
Section 28	Non-Discrimination

18. TERMINATION.

- 18.1 **TERMINATION WITHOUT CAUSE.** The County or Vendor may terminate this Contract at any time without cause by giving thirty (30) calendar days prior written notice to the other party deliverable in person or by certified or registered mail to the persons identified as the Contract Administrator/Analyst and/or Procurement Analyst for each party as set forth in Section 6 NOTICES. In the event the County terminates this Contract, the Vendor shall continue performing the service or work on the deliverable item until the termination date designated by the County in its termination notice. The County shall pay the Vendor for satisfactory work completed through the date of termination under the terms of this Contract.
- 18.2 **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:
- 18.2.1 **TERMINATION WITH CAUSE.** If, through any cause, the Vendor shall fail to fulfill its obligations under this contract in a timely and proper manner, the County shall have the right to terminate this contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the County, become its property and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Vendor shall not be relieved of liability to the County for damages sustained by the County by virtue of the Vendor's breach of this Contract, and the County may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the County from such breach can be determined. In case of default by the Vendor, without limiting any other remedies for breach available to it, County may procure the contract services from other sources and hold the Vendor responsible for payment of any excess cost occasioned thereby.
- 18.2.2 The filing of a petition for bankruptcy by the Vendor shall be an act of default under this Contract, and the County shall have the right to terminate this Contract by giving written notice to the Vendor and specifying the effective date thereof.
- 18.2.3 The County shall have shall have the right to terminate this Contract by giving written notice to the Vendor and specifying the effective date thereof if the Vendor takes or fails to take any action which constitutes grounds for termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract. County shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

- 18.3 **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, Vendor shall promptly (a) return to the County all computer programs (with the exception of software that Vendor provided as part of the equipment requirements), files, files in storage, documentation, data, media, related material and any other material and equipment and/or any other property acquired as referenced in Statement of Work that is owned by the County; and (b) allow the County or a new Vendor access to the systems, software, infrastructure, or processes of Vendor that are necessary to complete delivery of services. Deliver to the County all Work Product for which payment has been received by the Company. Refund to the County pre-paid expenses on a pro-rata basis as determined by the County. The return of files relative to the delivery of services in storage will be at no cost to the County. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information", as defined in the Section 22. SAFEGUARDING CUSTOMER AND COUNTY INFORMATION.
- 18.4 **AUTHORITY TO TERMINATE.** The County Manager or the County Manager's designee, including but not limited to the Director and the Assistant County Manager for the Consolidated Human Services Agency, is authorized to terminate this Contract on behalf of the County.
- 18.5 **CANCELLATION OF ORDERS AND SUBCONTRACTS.** In the event this Contract is terminated by the County for any reason prior to the end of the term, Vendor shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, Vendor shall submit a Statement to the County showing in detail the services performed under this Contract to the date of termination.
- 18.6 **NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS.** Any termination of this Contract shall not relieve Vendor of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve Vendor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve Vendor from any claim for damages previously accrued or then accruing against Vendor.
- 18.7 **OTHER REMEDIES.** Upon breach or termination of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedies.
- 18.8 **NO SUSPENSION.** In the event that the County disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit any services or warranties or repossess, disable or render unusable any goods supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period is limited to a ninety (90) day period.

19. RELATIONSHIP OF THE PARTIES.

The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the County that may arise under law or under the terms of this Contract.

- 20. REDUCTION OR NON-APPROPRIATION OF FUNDS.** In the event that Federal, State, Local or Grant funding is no longer available or has been reduced, the County shall not be obligated to continue this Contract or any part thereof. If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Contract for a given fiscal year, the County shall not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will notify Vendor of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County, which is attributable to non-appropriation of funds, shall

constitute a breach of or default under this Contract. Any unexpended grant funds shall revert to the County upon termination of this Contract.

- 21. RIGHT TO AUDIT.** During the term of this Contract and for a period of two years after expiration or termination, the County shall have the right to audit, either itself or through an independent auditor, all books, records, and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the County's payment obligations. The County shall pay for its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs to the Company.
- 22. NON-EXCLUSIVITY.**
The Company acknowledges that the County is not obligated to solely contract with the Company for the Products and/or Services covered under this Contract.
- 23. EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.** The Company represents and warrants that all Company Representatives provided by the Company to perform the services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Company Representative. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions which are required by law for each Company Representative. The Company agrees that the Company Representatives are not employees of the County.
- 24. INDEMNIFICATION.** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) either by paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any Services or deliverables provided to the County pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from the Company's violation of any law (including without limitation immigration laws); or (v) any claim that the Company or an employee or subcontractor of the Company is an employee of the County, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like or (vi) arising from a violation of any federal, state or local law, regulation or ordinance by the Company or any of its subcontractors, including without limitation E-Verify or other immigration laws.

For purposes of this Section: (a) the term "Indemnitees" means the County and each of the County's officers, officials, employees, agents and independent Contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Company shall, at its expense, either defend or settle any claim, action or allegation brought against the County. Provided the County gives prompt written notice of any such claim, action or allegation of infringement and provided County gives Company the authority, information, and reasonable assistance to handle the claim or defense of any such suit or proceeding, Company may, at its sole option and expense either: (i) procure for the County the right to continue using the affected product; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall service(s) provided to the County shall not be adversely affected by such replacement or modification.

25. FORCE MAJEURE.

- 25.1 **FORCE MAJEURE.** The following force majeure provisions shall apply to the Company and to the County at all times. Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Contract, and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied: If such failure or delay:
- 25.1.1. Could not have been prevented by reasonable precaution;
 - 25.1.2 Cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - 25.1.3 If, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
 - 25.1.4 An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
 - 25.1.5 Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the County shall have the right to terminate this Contract by written notice to the Company.
 - 25.1.6 Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under this Contract or at law.
- 25.2 **FORCE MAJEURE AFTER SYSTEM ACCEPTANCE.** The following force majeure provisions shall apply to the Company after System Acceptance. After System Acceptance, the Company shall not be excused from performance under this Contract by virtue of force Majeure events. The Company shall take precautions sufficient to ensure that force Majeure events (including but not limited to fire, flood, earthquake, hurricane, elements of nature, strikes, labor disputes, terrorism and acts of God) do not result in any failure or delay in the performance of the Company's obligations pursuant to this Contract. Failure to comply with this provision will constitute a default under this Contract, and grounds for immediate termination.

26. INSURANCE. Throughout the term of the Contract, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Contract, or in the event the Company fails to provide the County with the required certificates of insurance, the County shall be entitled to terminate the Contract immediately upon written notice to the Company.

- 26.1 **GENERAL REQUIREMENTS.** The Company shall not commence any work in connection with this Contract until it has obtained all of the types of insurance set forth in this section and the County has approved such insurance. The Company shall not allow any subcontractor to commence work on its subcontractor until all insurance required of the subcontractor has been obtained and approved.
- 26.2 All insurance policies required shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall name the County as an additional insured under the commercial general liability policy required.
- 26.3 The Company's insurance, except for Automobile Liability, shall be primary of any self-funding and/or insurance otherwise carried by the County for all loss or damages arising from the Consultant's operations

- under this Contract. The Company and each of its subcontractors shall and does waive all rights of subrogation against the County and each of the Indemnitees (as defined in this Contract).
- 26.4 The County shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 26.5 Prior to execution of this Contract, the Company shall provide the County with certificates of insurance documenting that the insurance requirements have been met, and that the County shall be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The Company shall further provide such certificates of insurance to the County at any time requested by the County after execution of this Contract, and shall provide such certificates within five (5) days after the County's request. The County's failure to review a certificate of insurance sent by or on behalf of the Company shall not relieve the Company of its obligation to meet the insurance requirements set forth in this Contract.
- 26.6 Should any or all of the required insurance coverage be self-funded/self-insured, the Company shall furnish to the County a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.
- 26.7 If any part of the work under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this section, provided that the amounts of the various types of insurance shall be such amounts as are approved by the County in writing. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.
- 26.2 **TYPES OF INSURANCE.** The Company agrees that it or its employees or subcontractors will maintain the following liability insurance marked with a ☒ with an insurance company, acceptable to the County, authorized to do business in the State of North Carolina:
- 26.2.1 ☒ **Commercial General Liability.** Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Contract, from claims of bodily injury or property damage which arise from operation of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and Contractual liability, assumed under the indemnity provision of this Contract. The County shall be named as additional insured under the commercial general liability insurance for operations or Services rendered under this Contract. Certificates of all required insurance shall be furnished. The County shall be named as additional insured under the commercial general liability insurance for operations or Services rendered under this Contract. Certificates of all required insurance shall be furnished to the County and shall contain the provision that the County will be given thirty (30) day written notice of any intent to amend or terminate by either the insured or the insuring company.
- 26.2.2 ☒ **Automobile Liability.** Agents of the Company driving onto County property in either their own or rented/hired automobiles shall carry Automobile Liability insurance providing bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 26.2.3 ☒ **Professional Errors & Omissions.** Insurance with a limit of not less than \$1,000,000 per claim occurrence as shall protect the Company and the Company's employees for negligent acts, errors or omissions in performing the professional services under this contract.
- 26.2.4 ☒ **Workers' Compensation.** The Company shall meet the statutory Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and,

Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

- 26.2.5 ☒ **Network Security & Privacy Liability.** Insurance with a limit of not less than \$1,000,000 per occurrence as shall protect the Company and its employees from claims alleging from the failure: (1) to provide the service specified under this Contract; (2) to provide adequate electronic security to safeguard against intrusion or breach; or, (3) protect private information obtained by the County.
- 26.2.6 ☒ **Fidelity Bond.** Insuring the Company and/or his employees that have access to monies or properties of the County. Providing employee dishonesty coverage on all employees at a limit of not less than \$50,000

27. SUBCONTRACTING. The Company shall not subcontract any of its obligations under this Contract without the County's prior written consent. In the event the County does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontractor entered into by Company shall name the County as a third party beneficiary.

28. NON-DISCRIMINATION.

- 28.1 **E-VERIFY, FMLA, ADA, OSHA.** The Company agrees to make itself aware of and comply with, and cause its subcontractors to comply with all federal, state, and local laws, regulations and ordinances relating to the performance of this Contract or to the Services delivered hereunder, including without limitation, E-Verify (Article 2 of Chapter 64 of the North Carolina General Statutes), Workers' Compensation, the Fair Labor Standards Act (FLSA) the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and Occupational Safety And Health Administration (OSHA). The Company further agrees to obtain all verifications, permits and licenses applicable to the performance of this Contract. If any violation of this section has occurred or does occur, the Company will indemnify and hold harmless the County from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of such violation.
- 28.2 The County is committed to promoting equal opportunities for all and to eliminating prohibited discrimination in all forms. For purposes of this section, prohibited discrimination means discrimination in the workplace or in the solicitation, selection, and / or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability, color, ancestry, citizenship, sexual orientation, gender, gender identity, genetic information, political affiliation, or military/veteran status, and any other status protected by federal, state, or local law or other unlawful form of discrimination. Without limiting the foregoing, prohibited discrimination also includes retaliating against any person, business or other entity for reporting or participating in an investigation regarding any incident of prohibited discrimination. It is understood and agreed that not only is prohibited discrimination improper for legal and moral reasons, prohibited discrimination is also an anti-competitive practice that tends to increase the cost of goods and services to the County and others. As a condition of entering into the Contract, the Company represents, warrants and agrees that it does not and will not engage in or condone prohibited discrimination and that prior to being deployed to a County assignment, employees and subcontractors will review and agree to abide by the County's Harassment Policy . Without limiting any rights the County may have at law or under any other provision of the Contract, it is understood and agreed that a violation of this provision constitutes grounds for the County to terminate the Contract.
- 28.3 Comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of

handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) the Food Stamp Act and USDA policy, which prohibit discrimination on the basis of religion and political beliefs; and (i) the requirements of any other nondiscrimination statutes which may apply to this Contract.

- 28.4 Maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability. Company agrees that it will inform County of any alleged violation(s) of employment practices involving any employees who work on the contract which are asserted in any claims filed with the Equal Employment Opportunity Commission, the US or NC Departments of Labor or any other Federal or State compliance agency.

29. OTHER OBLIGATIONS OF COMPANY.

- 29.1 **LOBBYING.** No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal Contract, continuation, renewal, amendment or modification of any Federal Contract, grant, loan or cooperative Contract.
- 29.1.1 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan or cooperative Contract, Company shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 29.1.2 Company shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants and Contracts under grants, loans and cooperative Contracts) and that all sub-recipients shall certify and disclose accordingly.
- 29.1.3 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 29.2 **DRUG-FREE WORKPLACE REQUIREMENTS.** By execution of this Contract the Company certifies that it will provide a drug-free workplace by:
- 29.2.1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- 29.2.2 Establishing a drug-free awareness program to inform employees about:
- 29.2.2.1 The dangers of drug abuse in the workplace;
- 29.2.2.2 The Company's policy of maintaining a drug-free workplace;
- 29.1.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
- 29.1.2.4 Penalties that may be imposed upon employees for drug abuse violations occurring in the work place;
- 29.2.3 Making it a requirement that each employee be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A);
- 29.2.4 Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the Contract, the employee will:

- 29.2.4.1 Abide by the terms of the statement; and
- 29.2.4.2 Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- 29.2.5 Notifying the County within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction;
- 29.2.6 Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - 29.2.6.1 Taking appropriate personnel action against such an employee, up to and including termination; or
 - 29.2.6.2 Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
 - 29.2.6.3 Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (14.3.1-14.3.6).
- 29.2.7 The site(s) for the performance of work done in connection with the specific Contract are listed in Statement of Work.
- 29.2.8 Company will inform the County of any additional sites for performance of work under this Contract.
- 29.2.9 False certification or violation of the certification shall be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment 45 C.F.R. Section 82.510.
- 29.3 **DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS.**
 - 29.3.1 By signing and submitting this Contract, the lower tier participant is providing the certification set out below.
 - 29.3.2 The certification in this clause is a material representation of the fact upon which reliance was placed when this Contract was entered into. If it is later determined that the lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - 29.3.3 The lower tier participant will provide immediate written notice to the person to whom the Contract is submitted if at any time the lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - 29.3.4 The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
 - 29.3.5 The lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
 - 29.3.6 The lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - 29.3.7 Participant in a covered transaction may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each County participant may, but is not required to, check the Non-Procurement List.
 - 29.3.8 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge

and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- 29.3.9 Except for transactions authorized in paragraph 21.2.4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.
- 29.3.9.1 Certification. The lower tier participant certifies, by submission of this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Contract.
- 29.4 **VENDOR SCORECARD.** At the County's sole discretion, Company may be required to: work with County Representatives to develop a vendor scorecard that captures key performance indicators; participate in periodic meetings with County Representatives to review vendor performance; and provide the County with information sufficient to monitor and track performance including, but not limited to, data on key performance indicators and customer satisfaction.
- 29.5 **WORK ON COUNTY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the County's premises, obey all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all such rules, regulations and security procedures when on the County's premises including but not limited to:
- (a) Comply with the Mecklenburg County Tobacco Use Policy, which prohibits County contractors and others performing services for the County, including Vendor, from smoking, using smokeless tobacco (chew, dip, snuff) and/or electronic or other nicotine delivery devices (electronic cigarettes, cigars, hookahs, pipes, etc.) in County, City and Town Buildings; County, City and Town Grounds; County, City and Town Vehicles; the County Park System; and Buildings located within the County Park System.
 - (b) Weapons are not permitted at County facilities (the exception are weapons possessed by law enforcement officials).
- 29.6 **DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA.** The Company shall be responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of the Company or its subcontractors. In the event that the Company causes damage to the County's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.
- 29.7 **NON-ENDORSEMENT AND PUBLICITY.** The County is not endorsing the Company's Products and/or Services, nor suggesting that they are the best or only solution available. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the County in any manner without the prior written consent of the County. Notwithstanding the forgoing, the parties agree that the Company may list the County as a reference in responses to requests for proposals, and may identify the County as a customer in presentations to potential customers.
- 29.8 **NO BRIBERY.** The Company certifies that neither it, nor any of its affiliates or subcontractors, in connection with this Contract has bribed or attempted to bribe an officer or representative of the County.
- 29.9 **SALES/USE TAX REFUNDS AND TAXES.** Vendor shall pay all applicable federal, state and local taxes chargeable against the performance of the services. N.C. G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of

representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Vendor certifies that it and all of its affiliates (if any) collect all required taxes.

If eligible, the Vendor and all subcontractors shall (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Except as specifically stated in the Contract, the Company shall pay all applicable federal, state, and local taxes which may be chargeable against the delivery of their products and performance of the services.

- 29.10 **GIFTS AND FAVORS REGULATED.** Comply with the provisions of North Carolina Executive Order 24 and NCGS§ 133-32, which provide that it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any officer or employee of a governmental agency or State employee of the Governor’s Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor) charged with the duty of preparing plans, specifications, or estimates for a public contract or awarding or administering a public contract. This prohibition covers those vendors and contractors who have a contract with a governmental agency; or have performed under such a contract within the past year; or anticipate bidding on such a Contract in the future.

29.10.1 Furnish financial and program data as required to document that applicable standards have been met;

29.10.2 Assure that funds received pursuant to this Contract shall be used only to supplement, not to supplant, the total amount of Federal, State and local public funds that the Company otherwise expends for Contract Services and related programs. Funds received under this Contract shall be used to provide additional public funding for such services; the funds shall not be used to reduce the Company’s total expenditure of other public funds for such services.

29.10.3 Make disbursements in accordance with the following requirements:

29.10.3.1 Implement adequate internal controls over disbursements;

29.10.3.2 Pre-audit all invoices/vouchers presented for payment to determine:

- i. Validity and accuracy of payment
- ii. Payment due date
- iii. Adequacy of documentation supporting payment
- iv. Legality of disbursement

29.10.3.3 Assure adequate control of signature stamps/plates;

29.10.3.4 Assure adequate control of negotiable instruments; and

29.10.3.5 Implement procedures to insure that account balance is solvent and reconcile the account monthly.

29.10.4 Certify that it has identified to the County all jobs related to the Contract that have been outsourced to other countries, if any. The Company further agrees that it will not outsource any such jobs during the term of this Contract without obtaining prior written approval from the County.

29.10.5 Agrees to notify the County within five (5) days upon the receipt of notification from the North Carolina Secretary of State that the business charter, articles of incorporation, articles of organization, or certificate of authority of the corporation or limited liability company is under suspension pursuant to N.C.G.S. §105-230 for failing to file any report or return or to pay any tax or fee required by the North Carolina Department of Revenue or to sign an agreement for repayment within ninety (90) days after it is due.

- 29.10.6 Shall comply with audit requirements as described in N.C.G.S. § 143C-6-22 & 23 and OMB Circular- CFR Title 2 Grants and Agreements, Part 200, and shall disclose all information required by 42 USC 455.104, or 42 USC 455.105, or 42 USC 455.106.
- 29.10.7 Iran Divestment Act Prohibition - Company represents that as of the date of this Contract or purchase order, Company is not currently listed on the Final Divestment List created and maintained by the North Carolina State Treasurer pursuant to G.S.143-6A-4. Further, pursuant to G.S. 143C-6A-5(b), Company further agrees to notify the County Procurement Department if at any time during the term of this agreement, it is added to the "List." The Divestment List may be found on the State Treasurer's website at www.nctreasurer.com/Iran.
- 29.10.8 Comply with the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 29.10.9 Make a good faith effort to include environmental considerations supporting waste reduction, recycling and purchase recycled and other environmentally preferable products whenever practical.

30. SAFEGUARDING CUSTOMER AND COUNTY INFORMATION

- 30.1 County data processed, maintained, programed, stored, etc. by the Company shall remain the exclusive property of the County. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the County in any manner except that contemplated by this Contract. The Company hereby certifies that, as a condition of employment with the Company, prohibits such employee from disclosing confidential, proprietary or other nonpublic information about the Company, its business interests, employees, customers, or suppliers.
- 30.2 Both parties hereto agree to comply with any and all applicable laws and regulations concerning the confidentiality of customer records, files or communications in addition to the terms of this Contract.
- 30.3 Both parties agree to secure privacy, confidentiality and integrity of customer, employee, and administrative data on automated systems and to install antivirus protection and a firewall as well as any other industry standard security measures.
- 30.4 Electronic exchange of confidential information, including any email which will include invoices, customer billing information, employee or administrative data, or any information regarding the delivery of services to customers/clients/patients, must be sent and received via encrypted methods. Company is responsible for determining how to send encrypted emails to the County.
- 30.5 Company agrees to keep confidential any information about a customer or the County pursuant to the Confidentiality and Non-Disclosure Contract which is incorporated herein as part of this Contract as follows:
- 30.5.1 **Confidentiality and Non-Disclosure.** Company has obtained or may need to obtain confidential information from the County or its licensors, contractors or suppliers in connection with the provision of Services to the County or the discussions of such a proposed relationship. The County and Company desire to stipulate and agree that any disclosure of confidential information in connection with the provision of Services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information. In consideration of the pursuit of current discussions and payment for the Services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:
- 30.5.1.1 **Definitions.** As used in this Contract, the following terms shall have the meanings set forth below:
- Confidential Information. The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally

known is obtained from the County or any of its suppliers, contractors or licensors which falls within any of the following general categories:

- (1) Trade Secrets. For purposes of this Contract, trade secrets consist of information of the County or Company or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- (2) Highly Restricted Information. Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) Company will also comply with any more restrictive instructions or written policies that may be provided by County from time to time to protect the confidentiality of Highly Restricted Information, as defined below:
 - i. Information of County or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."
 - ii. Information relating to criminal investigations conducted by County, and records of criminal intelligence information compiled by County.
 - iii. Information contained in County's personnel files, as defined by N.C. Gen. Stat. 153A-198. This consists of all information gathered by County about employees, except for that information which is a matter of public record under North Carolina law.
 - iv. Citizen or employee social security numbers collected by County.
 - v. Computer security information of County, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
 - vi. Local tax records of County that contain information about a taxpayer's income or receipts.
 - vii. Any attorney/client privileged information disclosed by either party.
 - viii. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
 - ix. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
 - x. Protected health information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), and any other health information that is designated as confidential under Federal or State law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information

shall include information disclosed or revealed within one year prior to the date of this Contract.

30.5.2 **Restrictions.** Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

30.5.2.1 Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by County in writing.

30.5.2.2 Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subcontractor or Company of the County or Company having a need to know such Confidential Information for purpose of performing work contemplated by this Contract between the County and Company, and who has executed a confidentiality Contract incorporating substantially the form of this Confidentiality and Non-Disclosure Contract. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County's prior written consent.

30.5.2.3 Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written Contracts between the parties hereto or is for the purpose for which such Confidential Information is being disclosed.

30.5.2.4 Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information. Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.

30.5.2.5 In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

30.5.2.6 All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to County or destroyed upon satisfaction of the purpose of the disclosure of such information.

30.5.2.7 Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs. Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.

30.5.3 **Exceptions.** County agrees that Company shall have no obligation with respect to any Confidential Information that Company can establish:

30.5.3.1 Was already known to Company prior to being disclosed by County;

30.5.3.2 Was or becomes publicly known through no wrongful act of Company;

30.5.3.3 Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;

30.5.3.4 Was used or disclosed by Company with the prior written authorization of County;

- 30.5.3.5 Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the other party notice of such requirement or request;
- 30.5.3.6 Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that Company shall take reasonable steps to obtain an Contract or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.
- 30.5.4 **Remedies.** Company acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the County's proprietary interests therein. Accordingly, it is agreed that if Company breaches its obligations hereunder, County shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.
- 30.5.5 **Data Security.** The Company shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.
- 30.5.6 Except as otherwise set forth in the Business Associate Agreement, The Company shall report a suspected or confirmed security breach to the County Procurement Analyst within twenty-four (24) hours after the breach is first discovered, provided that the Company shall report a breach involving data of matched earnings from reports provided by the Social Security Administration or Internal Revenue Service within one (1) hour after the breach is first discovered. If any applicable Federal, State, or local law, regulation, or rule requires the Company to give written notice of a security breach to affected persons, the Company shall bear the cost of the notice.
- 30.6 **Health Insurance Portability and Accountability Act.** Company agrees that it shall comply with the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA") and its implementing regulations and will execute such contracts and practices as the County may require to ensure compliance, including but not limited to adherence to the terms of the Business Associate Agreement included herein as Exhibit .

Company agrees that, if the County determines that some or all of the activities within the scope of this Contract are subject to the [Health Insurance Portability and Accountability Act of 1996, P.L. 104-91](#), as amended ("HIPAA"), and its implementing regulations, it will comply with the HIPAA requirements and will execute such contracts and practices as the County may require to ensure compliance.

31. E-VERIFY DECLARATION

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, _____ (the individual attesting below), being duly authorized by and on behalf of
_____ (the entity contracting with the County, hereinafter
("Vendor ") AFFIRMS AND DECLARES as follows:

1. Vendor understands that E-Verify is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Pursuant to NCGS §143-133.3 and NCGS § 64-26(a), any "employer" that transacts business in this State and employs 25 or more employees in this State entering into a contract with the County is required to verify the work eligibility status of all newly hired employees through the E-Verify program.
3. Vendor is a person, business entity, or other Vendor that transacts business in this State and employs 25 or more employees in this State. (check Yes or No)
 - a. ☐ YES, or
 - b. ☐ NO
4. For Vendors who employ 25 or more employees in the State and are therefore subject E-Verify, the undersigned verifies the VENDOR's/Employer's compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
5. Vendor's subcontractors performing work under this Agreement that employ 25 or more employees in this State must also comply with E-Verify, and Vendor agrees that it will ensure compliance with E-Verify by any of its subcontractors used by Vendor on this agreement that employ 25 or more employees in this State.
6. I hereby declare under penalty of perjury that the foregoing is true and correct.

This ____ day of _____, 20____.

Vendor's Name

Signature, Vendor's Authorized Agent

Date

Print or Type Name

Title

32. OVERDUE TAX CERTIFICATION

Entity's Letterhead

[Date of Certification (mmddyyyy)]

To: Mecklenburg County

Certification:

We certify that the [insert organization's name] does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the Federal, State, or local level. We further understand that any person who makes a false Statement in violation of N.C.G.S. 143C-6-23 c is guilty of a criminal offense punishable as provided by N.C.G.S. 143C-10-1b.

Sworn Statement:

[Name of Board Chair or Authorized Official] and [Name of Second Authorizing Official if you have] being duly sworn, say that we are [Board Chair or Authorized Official] and [Title of the Second Authorizing Official], respectively, of [insert name of organization] of [City] in the State of [Name of State]; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

Board Chair or Authorized Official

(One signature must be the same as the person signing the contract)

¹ G.S. 105-243.1 defines: Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.”

33. CONFLICT OF INTEREST

Instructions: Each organization that chooses to use this template should take care to make changes that reflect the individual organization, put this on your letterhead which includes name and address and sign.

Conflict of Interest Defined:

A conflict of interest is defined as an actual or perceived interest by a (staff member/Board member) in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. A conflict of interest occurs when an employee/Board member has a direct or fiduciary interest in another relationship. A conflict of interest could include:

- Ownership with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Employment of or by a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Contractual relationship with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Creditor or debtor to a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Consultative or consumer relationship with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.

The definition of conflict of interest includes any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization or group. An example, for instance, might involve a person who is an employee and a Board member, or a person who is an employee and who hires family members as consultants.

Employee Responsibilities:

It is in the interest of the organization, individual staff, and Board members to strengthen trust and confidence in each other, to expedite resolution of problems, to mitigate the effect and to minimize organizational and individual stress that can be caused by a conflict of interest.

Employees are to avoid any conflict of interest, even the appearance of a conflict of interest. This organization serves the community as a whole rather than only serving a special interest group. The appearance of a conflict of interest can cause embarrassment to the organization and jeopardize the credibility of the organization. Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to your supervisor immediately. Employees are to maintain independence and objectivity with clients, the community, and organization. Employees are called to maintain a sense of fairness, civility, ethics and personal integrity even though law, regulation, or custom does not require them.

Acceptance of Gifts:

Employees, members of employee's immediate family, and members of the Board are prohibited from accepting gifts, money or gratuities from the following:

- a. Persons receiving benefits or services from the organization;
- b. Any person or organization performing or seeking to perform services under contract with the organization; and
- c. Persons who are otherwise in a position to benefit from the actions of any employee of the organization.

Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If the employee is acting in any official capacity, honoraria received by an employee in connection with activities relating to employment with the organization are to be paid to the organization.

Signature of Authorized Official must be the same as the person signing contract.

34. **CERTIFICATIONS REQUIRED BY NORTH CAROLINA LAW.** The person who signs this document should read the text of the statutes listed below and consult with counsel and other knowledgeable persons before signing.

- Article 2 of Chapter 64:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article2.pdf
- G.S. 133-32: <http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=133-32>
- Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009):
<http://www.ethicscommission.nc.gov/library/pdfs/Laws/EO24.pdf>
- G.S. 105-164.8(b):
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf
- G.S. 143-48.5:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-48.5.html
- G.S. 143-59.1:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf
- G.S. 143-59.2:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf
- G.S. 143-133.3:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-133.3.html
- G.S. 143B-139.6C:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143B/GS_143B-139.6C.pdf

Certifications

- (1) **Pursuant to G.S. 133-32 and Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009)**, the undersigned hereby certifies that the Contractor named below is in compliance with, and has not violated, the provisions of either said statute or Executive Order.
- (2) **Pursuant to G.S. 143-48.5 and G.S. 143-133.3**, the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov

Local government is specifically exempt from Article 2 of Chapter 64 of the North Carolina General Statutes. However, local government is subject to and must comply with North Carolina General Statute 153A-99.1, which states in part as follows:

Counties Must Use E-Verify - Each county shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.

- (3) **Pursuant to G.S. 143-59.1(b)**, the undersigned hereby certifies that the Contractor named below is not an "ineligible Contractor" as set forth in G.S. 143-59.1(a) because:
 - (a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North

- Carolina when the sales met one or more of the conditions of G.S. 105-164.8(b); **and**
- (b) [check **one** of the following boxes]
- ☐ Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001; **or**
- ☐ The Contractor or one of its affiliates **has** incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 **but** the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.
- (4) **Pursuant to G.S. 143-59.2(b)**, the undersigned hereby certifies that none of the Contractor's officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.
- (5) **Pursuant to G.S. 143B-139.6C**, the undersigned hereby certifies that the Contractor will not use a former employee, as defined by G.S. 143B-139.6C(d)(2), of the North Carolina Department of Health and Human Services in the administration of a contract with the Department in violation of G.S. 143B-139.6C and that a violation of that statute shall void the Agreement.
- (6) The undersigned hereby certifies further that:
- (a) He or she is a duly authorized representative of the Vendor named below;
- (b) He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Vendor; and
- (c) He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1 and -59.2 shall be guilty of a Class I felony.

Vendor's Name

Signature, Vendor's Authorized Agent

Date

Print or Type Name

Title

In WITNESS WHEREOF, the parties have duly executed this Contract as of the date first above written.

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Contract.

Vendor: _____

Vendor Signature: _____

State of _____ County of _____

I, _____, Notary Public for _____ County

certify that _____ personally appeared before me

this day and acknowledged that he/she _____ of
(circle one) (title)

_____ and by that authority

duly given and as the act of the corporation, affirmed that the information is true and correct.

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public (Official Seal)

My Commission expires _____

**PRICE SCHEDULE
AND
COMPONENTS KNOWN AS OF THE EFFECTIVE DATE**

This Exhibit is incorporated into and made a part of the Master Contract for **Project Name** between Mecklenburg County (the "County") and **COMPANY NAME** (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Contract.

INSERT TABLE TO REFLECT DETAILED LIST OF COMPONENTS AND PRICING

Sample Contract

MILESTONE PLAN

This Milestone Plan is incorporated into and made a part of the Master Contract for **Project Name** between Mecklenburg County (the “County”) and **COMPANY NAME** (the “Company”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the Contract, including but not limited to **Exhibit C**.

The Company shall invoice the County for the Purchase Price in accordance with the Milestone Plan set forth below. The Company shall not invoice the County for any Products, Services or Deliverables within a Milestone until all Services and Deliverables required in connection with that Milestone have been fully completed and Accepted by the County.

<i>Milestone</i>	<i>Deliverable</i>	<i>Planned Completion Date</i>	<i>Invoice Amount</i>
Phase 1:			
Phase 2:			
Phase 3:			
Phase 4:			
Final Phase			

IMPLEMENTATION SERVICES

Implementation Services has one key activity: deploying the new system in its target environment. Supporting actions include training end-users and preparing the system for operation. Multiple-release projects require multiple iterations of the Implementation Services – one for each release.

1.0 OBJECTIVE/GOALS

Objectives

Successful completion of the Implementation Services should comprise:

- System deployment
- System training

2.0 DELIVERABLES AND APPROVALS

With deliverables and approvals both parties will successfully plan, execute, and control IT projects by providing a framework to ensure that all aspects of the project are properly and consistently defined, planned, and communicated.

The development and distribution of deliverables:

- Ensure common understanding among County Project Manager and stakeholders and Company Team,
- Serve as a reminder of specified plans as projects become increasingly complex,
- Provide County Project Manager insight into project risks and ongoing performance,
- Encourage the execution of repeatable and consistent processes,
- Facilitate the implementation of project management and agency IT best practices, and
- Result in a comprehensive record of project performance useful for many purposes (e.g. staff knowledge transfer, budgetary and other assessment activities, lessons learned).

During the development of documentation, the Company Team should:

- Write comprehensive, easy to understand documents with no redundant information.
- Develop an organized document repository for critical project information, so County Project Manager can easily access, store, and reference project documents and other deliverables from all life cycle phases.
- Implement routine deliverable reviews to correct inaccuracy, incompleteness, and ambiguities.

The following is a listing of deliverables required of all projects for this phase of work. Deliverables need to be updated for each iteration of the Implementation Services.

Deliverable	Goals	Developed By	Approved By
Complete System – includes all code – modules, components, and libraries – kept in the production version of the data repository.	<ul style="list-style-type: none"> • Deliver system that meets the business need and all requirements • Deploy system to production environment 	Company Team	County Project Manager
System Documentation – includes all technical documentation delivered during the project (e.g. System Administration Manual).	<ul style="list-style-type: none"> • Provide all documentation necessary to effectively operate and maintain the system 	Company Team	County Project Manager
Implementation Notice – formally requests approval for system changes made during the Implementation Services.	<ul style="list-style-type: none"> • Formally request approval for system implementation 	Company Team	County Project Manager

Readiness Document – consolidates summary information regarding the current status of the system and the project and provides decision makers with the information necessary to make a “Go/No Go” decision. Include a checklist listing all work products, acceptance test results, other indicators of success measures and deliverable acceptance.	<ul style="list-style-type: none"> • Provide information necessary to make the go/no-go decision • Consolidate status information regarding the effective completion of the project and achievement of project objectives and requirements <ul style="list-style-type: none"> • Affirm achievement of all deliverable acceptance criteria 	Company Team	County Project Manager
Deliverable	Goals	Developed By	Approved By
Version Description Document – primary configuration control document used to track, and control versions of a system released to the operational environment. It also summarizes features and contents for the build and identifies and describes the version delivered.	<ul style="list-style-type: none"> • Allow for tracking and control of system releases to the operational environment • Document features and content in system builds • Identify the version of the system being delivered 	Company Team	County Project Manager
Post-Implementation Review Report – summarizes the assessment of Implementation activities at the end of the Implementation Services.	<ul style="list-style-type: none"> • Summarize assessment of implementation activities • Evaluate the effectiveness of the system development after the system has been in production • Determine if the system does what it was designed to do 	County Project Manager Company Team	County Project Manager
Standard Operating Procedures (SOP) (Optional) – defines in detail how the Systems Team will perform the business processes related to the operations and maintenance of the system.	<ul style="list-style-type: none"> • Provide detailed instructions for future business processes • Ensure consistent execution of business processes • Drive performance improvement and improve organizational results 	County Project Manager Company Team	County Project Manager

All deliverables other than those identified as Updates should be developed in this phase. Deliverables identified as Updates should be revisited and enhanced as necessary as prescribed in this phase.

Deliverables produced during this phase must be reviewed in detail and should follow the approval path as defined in the above table (for each iteration). A signature page or section should accompany each deliverable requiring approval.

3 3.0 ROLES

The following personnel participate in the work activities during this phase:

- Project Sponsor, if applicable
- County Project Manager
- Company Team
- Project Stakeholders

RACI Key

Responsible – Describes role that executes the activities to achieve the task.

Accountable – Describes roles that own the quality of the deliverable and sign off on work that Responsible provides.

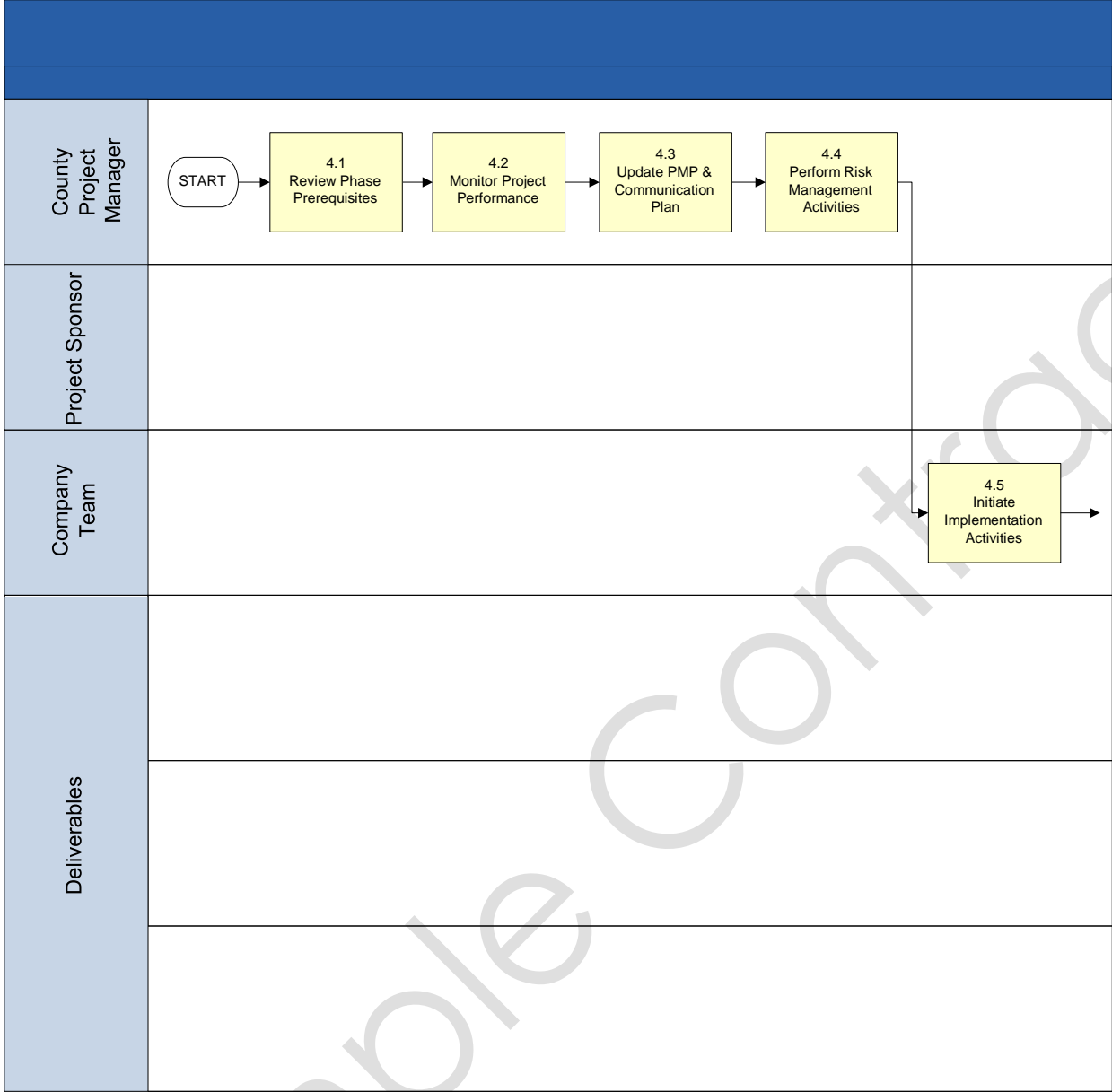
Consulted – Describes roles that provide subject matter expertise.

Informed – Describes roles that receive information about the task.

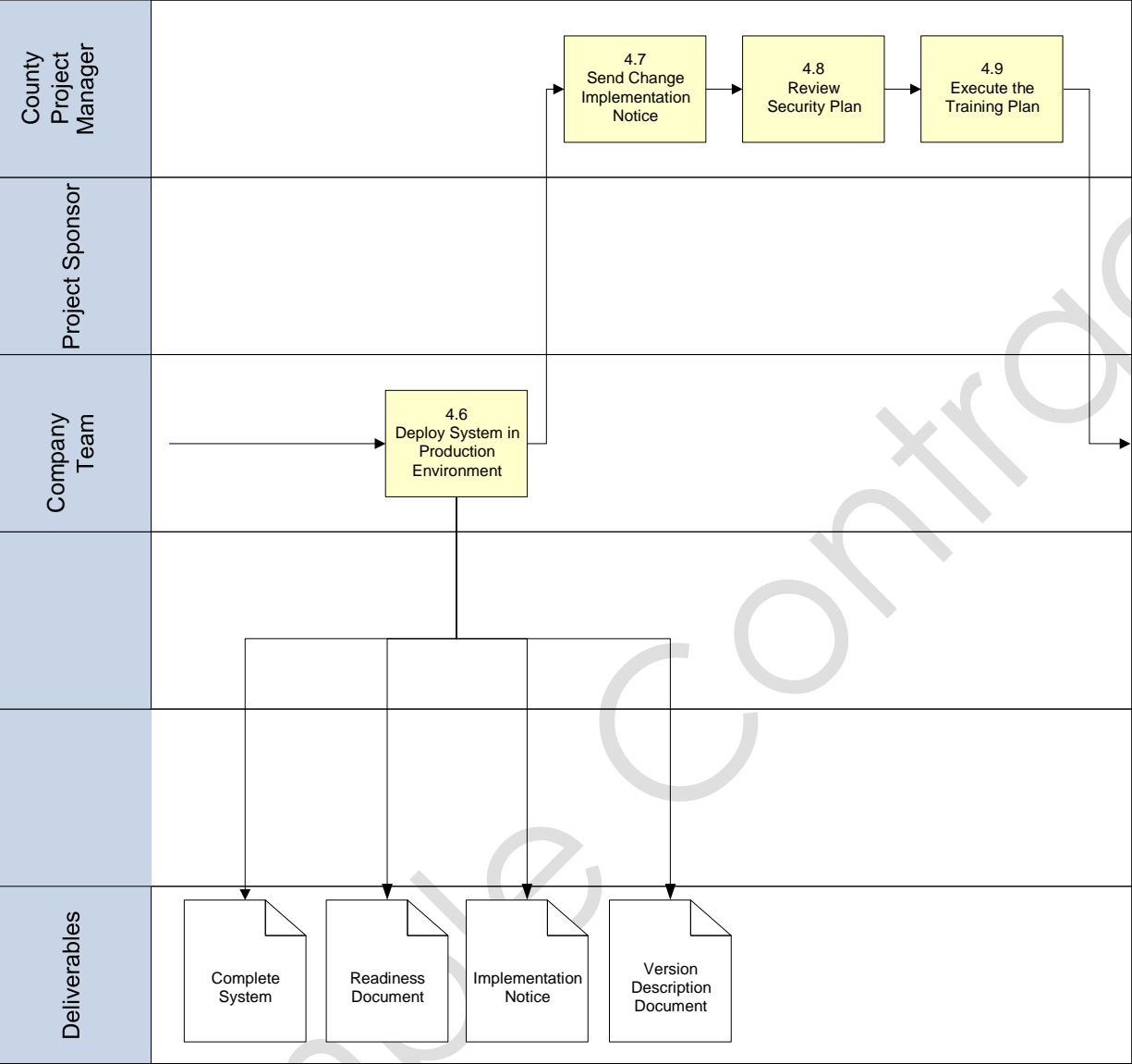
Deliverable	Project Sponsor	County Project Manager	Company Team	Project Stakeholders
Complete System	A	R	I	I
System Documentation	A	R	I	I
Implementation Notice	I	R	I	I
Readiness Document	I	R	I	I
Version Description Document	I	R	I	I
Post-Implementation Review Report	A	R	I	C
Standard Operating Procedures	A	R	I	I

Possible RACI Matrix

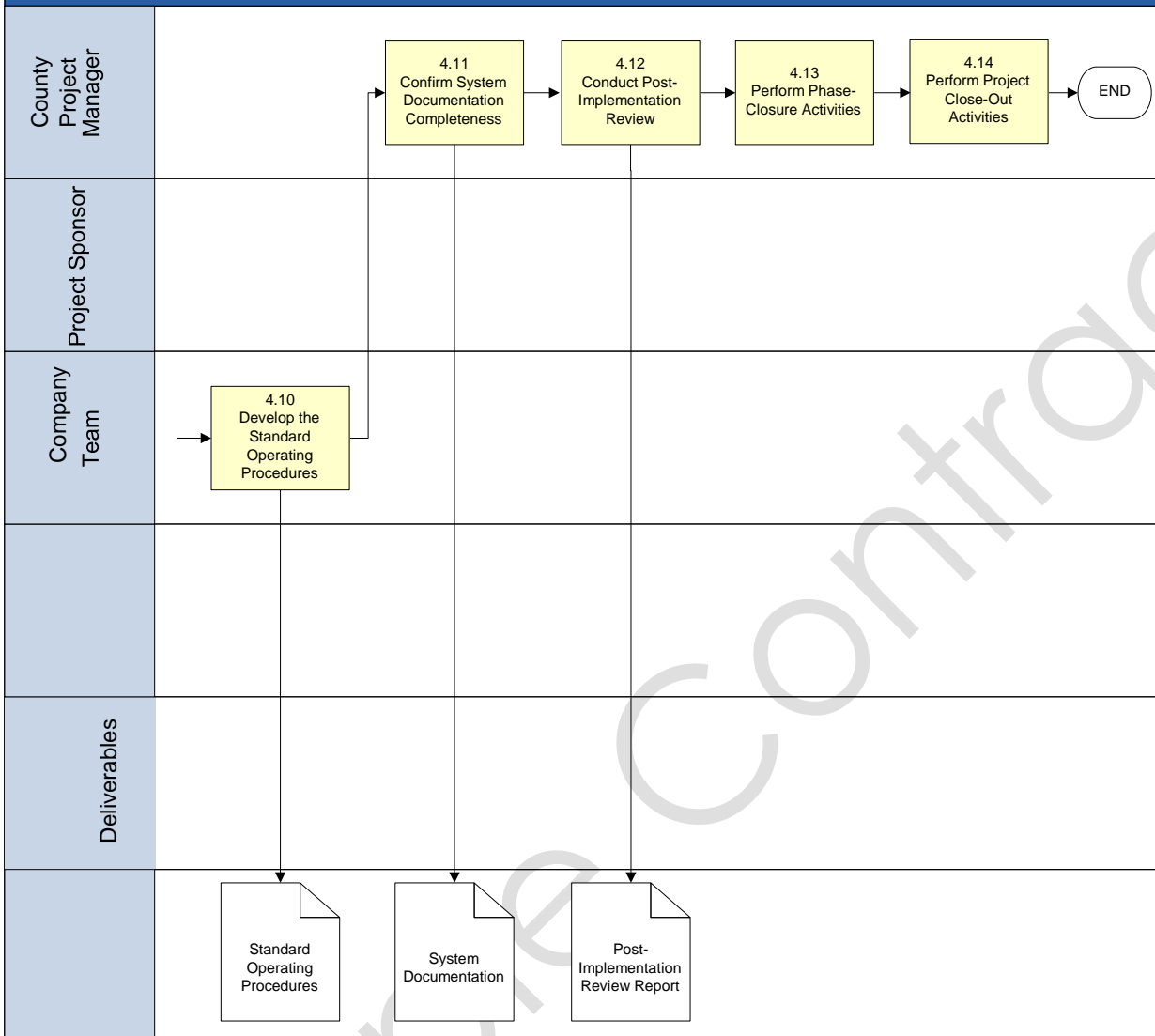
The Roles and Responsibilities page has detailed descriptions of these roles and their associated responsibilities.



Phase 8 Implementation Phase



Phase 8 Implementation Phase



4.1 Review Services Prerequisites.

The County Project Manager ensures the following prerequisites for this phase are complete:

- The Project Management Plan is current, and the schedule showing the target termination date for the system is current.
- All testing is complete; the system has passed User Acceptance Testing (UAT).
- The Implementation Plan is complete and current.
- Training plans to train end users on proper system use are complete.
- The system documentation is complete and available.
- The system has completed Certification and Accreditation according to the County guidelines.

4.2 Monitor Project Performance.

The County Project Manager monitors project performance by gathering status information about:

- All changes to baseline data.
 - Change management information.
- Activity progress with status details.
- List of complete and incomplete deliverables.

- Activities initiated and finished.
- Quality assurance testing and test results.
- Estimated time to completion.
- Resource utilization data.
- Changes to project scope.

The County Project Manager also organizes and oversees systematic quality assurance reviews of project work as a part of monitoring the project performance.

To measure project effort at all phases of the life cycle, the County Project Manager establishes timelines and metrics for success at each phase of work when planning project tasks.

The County Project Manager provides additional details on controlling project work in sections 4.4 and 4.5 and on project scope control in section 5.5.

4.3 Update Communication Management Plan.

The County Project Manager updates the Project Management Plan (PMP) routinely (at least quarterly) to ensure the PMP reflects project performance accurately. Review project performance controls and risks for deviations from the baseline.

Information dissemination is one of the most important responsibilities of the County Project Manager. The County Project Manager reviews and updates the Communication Management Plan at least quarterly to account for potential changes in project stakeholders. The County Project Manager distributes the updated PMP and risk management information according to the revised Communication Management Plan.

Perform Risk Management Activities.

The County Project Manager conducts risk management activities during the Implementation Services; these activities include:

- Identification – determination of risks that might affect the project and emerging risks as well as each risk characteristic
- Risk Analysis – conducting quantitative and/or qualitative analysis of each identified risk.
- Response Planning – tracking risks, monitoring residual risk, identifying new risks, executing response plans, and evaluating risk management effectiveness
- Monitoring and Control – definition of procedures to track risks, monitor residual risk, identify new risks, execute response plans, and evaluate risk management effectiveness

These activities occur throughout the project duration to track and mitigate any new or changed project risks.

4.5 Initiate Implementation Activities.

The Company Team begins implementation with the following tasks:

- Selection of standards, methods, and tools for deploying the system.
- Carrying out of Implementation Services activities according to the detailed project. Implementation activities need to be performed for each release.
- Review of the change management process to ensure all Test Services modifications have been documented.

4.6 Deploy System in Production Environment.

The Company Team deploys the system in the production environment and at all applicable sites. While deploying the system, the Company Team should keep the configuration information updated by following the Configuration Management Plan defined in the Planning Services. The Company Team will repeat this activity for each iteration associated with a release to production.

4.7 Send the Change Implementation Notice, if applicable.

The County Project Manager sends the Change Implementation Notice to all end users and organizations affected by the implementation. In addition, the County Project Manager informs those not directly affected by the implementation of possible disruptions to normal activity. The Change Implementation Notice includes the following:

- Implementation schedule
- Brief description of benefits of the new system
- Differences between the old and new system
- Responsibilities of end users during the Implementation Services
- Instructions for contacting technical support, including contact names and phone numbers

The Company Team will repeat these activities for each iteration associated with a release to production.

4.8 Review the Security Plan.

The County Project Manager reviews the Security Plan for required security policies and procedures during the Implementation Services. Confirm that end users will receive training on security policies and procedures according to the Training Plan.

4.9 Execute the Training Plan.

The County Project Manager oversees training on the new system. Use the previously designed training plan to train effectively. Request trainee feedback to determine if the training was effective. The Company Team will repeat these activities for each iteration associated with a release to production.

4.10 Develop the Standard Operating Procedures.

The Company Team may elect to develop SOP to provide documented and detailed instructions for performing all future business procedures associated with the system operations and maintenance. The SOP may reference procedures already documented in the Operations Manual, Administration Manual, and Maintenance Manual. The SOP should focus on nontechnical procedures necessary to execute future business processes. For multiple-release projects, the Company Team should develop the SOP as part of the first Implementation Services iteration and then update the SOP for each additional release.

4.11 Confirm System Documentation Completeness.

The County Project Manager reviews all system documentation to confirm that it is complete and correct. Review carefully the Operations Manual or System Administration Manual to ensure readiness for the Operations and Maintenance Services.

4.12 Conduct Post-Implementation Review.

The County Project Manager – with extensive input from the Project Sponsor, Company Team, and key project stakeholders – conducts the Post-Implementation Review (PIR). Held after implementation is complete and the project effort is to be formally closed, the PIR is a formal evaluation of the actual level of project success. The PIR may also help agencies learn valuable lessons for future projects. The Company Team will conduct a formal PIR after the project's final release to production. Interim reviews should be conducted after each release to identify lessons learned to utilize for future releases.

4.12.1 Review the project performance

Review the project performance to assess whether the project delivered promised benefits, met the agency project objectives, operated within scope, and produced the promised deliverables on time, within budget, and using the allocated resources. Assess how the project performed against each of the targets defined during the Initiation, Concept Development, and Planning phases. Identify whether the project:

- Delivered the business benefits described in the deliverables
- Achieved the objectives specified in the Project Charter and Project Scope Statement

- Remained within the original scope
- Produced the necessary deliverables as defined in the work breakdown structure
- Met the quality targets defined in the Quality Management Plan
- Was completed within the planned project schedule
- Delivered within the budget defined in project request and any approved changes

4.12.2 **Assess stakeholder satisfaction**

Assess general stakeholder satisfaction and any perceived gaps that may require additional scrutiny.

4.12.3 **Review the project conformance**

Assess whether the project conformed to the management processes described in the project plans, and identify the extent to which the project has conformed project management areas of:

- Time Management
- Cost Management
- Quality Management

- Change Management
- Risk Management
- Issue Management
- Procurement Management
- Acceptance Management
- Communications Management

4.12.4 **Identify project achievements**

List the major achievements for the project and describe the positive effect of each achievement on the business.

4.12.5 **Identify gaps in project fulfillment/project failures**

List any project failures or gaps in promised functionality and describe their effect on the organization.

4.12.6 **Identify lessons learned**

Describe the lessons learned from undertaking this project and list any recommendations for similar projects in the future.

If after the review the County Project Manager finds the project's implementation to be unacceptable, the Agency CIO may issue follow-up instructions and instruct the County Project Manager to correct the deficiencies. If contractors completed the development, the County Project Manager may determine that additional remediation work is within the scope of the statement of work or in the original contract.

4.13 **Perform Services-Closure Activities.**

The County Project Manager and the Company Team prepare and present a project status review for the Agency CIO, Project Sponsor, Executive Sponsor, and other project stakeholders after completing all Implementation Services tasks. This review addresses the following:

- Status of Implementation Services activities
- Planning status for operations and maintenance phases
- Status on resource availability for operations and maintenance
- "Go-No Go" decision made to proceed to next phase, based on Implementation Services information
- Transfer system management responsibility to Systems Team personnel

The County Project Manager compares actual project performance to the PMP and the projected cost of the project to determine any variances from the cost baseline during the phase-end review. The County Project Manager also updates the Risk Analysis.

Document any end user requests for system changes to mitigate misunderstandings between end users and the Company Team. Review the Contracts Management checklist found with the contract for unfinished contract tasks before closing out the Implementation Services.

The County Project Manager must obtain deliverable approval signatures before proceeding to the Operations and Maintenance Services.

Update the project documentation repository upon completion of the phase-closure activities.

4.14 Perform Project Close-Out Activities.

The County Project Manager closes the project and transitions the system to the County Systems Team once the system is implemented in production and operates in a stable manner. Activities include:

- Transition of outstanding requirements to the County Systems Team
- Disbanding of the Company Team and completion of team performance reviews
- Resolution of remaining contractor invoicing and contract compliance issues
- Close out of procurements
- Conducting of a lesson learned assessment of the project work to understand project difficulties and areas for improving future agency project work
- Obtaining of final project acceptance by the Project Sponsor, if applicable
- Archiving of all relevant project documents as historical data. Refer to the Data Retention Plan completed in the Development Services.
- Verification that all changes are conducted in accordance with the approved Change Management Plan

5.0 CONCLUSION

When the Implementation Services concludes, the system begins operating and continues to do so until the County determines it has outlived its usefulness and starts planning for a replacement system. The approval of the Implementation Services deliverables and the completion of the Implementation project status review, and the execution of project close-out activities, signify the end of the Implementation Services.

Sample Contract

Sample Contract

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement"), is by and between Mecklenburg County, a political subdivision of the State of North Carolina ("Covered Entity"), and Service Provider ("Business Associate").

WITNESSETH:

WHEREAS, Business Associate provides certain services on behalf of Covered Entity that require Covered Entity to disclose certain identifiable health information to Business Associate, pursuant to the terms of a services agreement or other contract between the parties (the "Services Agreement"); and

WHEREAS, the parties desire to enter into this Agreement to permit Business Associate to use or disclose such identifiable health information and to comply with the business associate requirements of the Health Insurance Portability and Accountability Act of 1996 and the privacy, security, administrative, enforcement and breach notification rules and regulations promulgated thereunder, as currently in effect or as hereafter amended (collectively, "HIPAA"); and

WHEREAS, Business Associate may have access to Protected Health Information ("PHI"), as defined below, in fulfilling its responsibilities under such arrangement.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning for those terms as set forth in HIPAA. Where provisions of this Agreement are different than those mandated by HIPAA, but are nonetheless permitted by HIPAA, the provisions of this Agreement shall control.

1.1 Protected Health Information. "Protected Health Information" ("PHI") shall have the same meaning as the term "Protected Health Information" set forth at 45 C.F.R. § 160.103, limited to the information received from, or created, received maintained or transmitted by Business Associate on behalf of, Covered Entity.

1.2 Electronic Protected Health Information. "Electronic Protected Health Information" ("Electronic PHI") shall mean PHI transmitted by or maintained in "electronic media" (as such term is defined in 45 C.F.R. § 160.103).

1.3 Breach. "Breach" shall have the same meaning as codified at 45 C.F.R. § 164.402.

1.4 Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.

1.5 Unsecured Protected Health Information. "Unsecured Protected Health Information" ("Unsecured PHI") shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published at 74 Fed. Reg. 19006 (April 27, 2009), and in annual guidance published thereafter.

SECTION 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Not to Use or Disclose PHI Unless Permitted or Required. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement, or as required by law, or as otherwise authorized by Covered Entity.

2.2 Use Safeguards. Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule with respect to Electronic PHI, to prevent the use or disclosure of PHI other than as provided for by this Agreement as outlined in Section 4 of this Agreement.

2.3 Mitigate Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement.

2.4 Report Unpermitted Disclosures of PHI. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not permitted or required by this Agreement (an "Incident") of which Business Associate becomes aware, including breaches of Unsecured PHI as required by 45 C.F.R. § 164.410.

2.5 Compliance of Agents. Business Associate agrees to require any agents, including subcontractors, that create, receive, maintain or transmit PHI on its behalf to agree to the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such PHI.

2.6 Requests for Restrictions. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 and of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding 45 C.F.R. § 164.522(a)(1)(ii), Business Associate agrees to comply with an individual's request to restrict disclosures of PHI, of which Business Associate has been notified by Covered Entity, to a health plan for purposes of carrying out "payment" or "health care operations" (as such terms are defined in 45 C.F.R. § 164.501) if the PHI pertains solely to a health care item or service for which Covered Entity has been paid in full by the individual or the individual's representative.

2.7 Provide Access. Business Associate will make available to Covered Entity PHI to the extent requested by Covered Entity, including without limitation as required under 45 C.F.R. § 164.524, which describe the requirements applicable to an individual's request for access to PHI relating to the individual. The obligations of Business Associate in this Section apply only to PHI in a "Designated Record Set" in Business Associate's possession or control as such term is defined at 45 C.F.R. § 164.501.

2.8 Incorporate Amendments. Business Associate will make available to Covered Entity PHI requested by Covered Entity, including without limitation as required for amendment of such PHI, and shall make and incorporate any such amendments, all in accordance with 45 C.F.R. § 164.526, which describes the requirements applicable to an individual's request for an amendment to any PHI relating to the individual. The obligations of Business Associate in this Section apply only to PHI in a "Designated Record Set" in Business Associate's possession or control as such term is defined at 45 C.F.R. § 164.501.

2.9 Document Disclosures. Business Associate will make available PHI requested by Covered Entity, including without limitation as required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528, which describe the requirements applicable to an individual's request for an accounting of disclosures of PHI relating to the individual. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

2.10 Disclose Practices, Books, and Records. If Business Associate receives a request, made on behalf of the Secretary, that Business Associate make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with HIPAA, then Business Associate will promptly comply with the request within the time period required for such response as specified in such request.

2.11 Other. To the extent the Business Associate is to carry out the Covered Entity's obligation, Business Associate shall comply with the Privacy, Security and Breach Notification Rules that apply to the Covered Entity in the performance of such obligation.

SECTION 3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 Functions and Activities on Behalf of Covered Entity. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI only to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

3.2 Other Uses and Disclosures. Except as otherwise limited by this Agreement, Business Associate may use and disclose PHI as follows:

- a. if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
 - i. the disclosure is required by law; or
 - ii. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
- b. for data aggregation services, if to be provided by Business Associate for the health care operations (as such term is defined in 45 C.F.R. § 164.501) of Covered Entity pursuant to any agreements between the parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of PHI by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

3.3 Minimum Necessary. Business Associate shall use, disclose, or request only the minimum necessary amount of PHI to accomplish the intended purpose of such use, disclosure, or request.

SECTION 4. SECURITY SAFEGUARD RULES

4.1 Implement Safeguards. Business Associate shall implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements set forth in Sections 164.308, 164.310, and 164.312.

4.2 Compliance of Agents and Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement the same safeguards required of Business Associate in Section 4.1 hereof.

4.3 Report Security Incidents. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. For purposes of this Agreement, "Security Incident" means the successful unauthorized access, use, disclosure, modification, or destruction of Electronic PHI or interference with system operations in an information system, excluding: (a) "pings" on an information system firewall; (b) port scans; (c) attempts to log on to an information system or enter a database with an invalid password or user name; (d) denial-of-service attacks that do not result in a server being taken offline; or (e) malware (e.g., a worm or virus) that does not result in unauthorized access, use, disclosure, modification, or destruction of Electronic PHI. Business Associate agrees to mitigate, to the extent practicable, any harmful effect resulting from such Security Incident.

SECTION 5. BREACH NOTIFICATION

5.1 Timing of Notification. Following the discovery of an Incident, including an impermissible or unauthorized disclosure of data in a limited data set, or a confirmed Breach of Unsecured PHI, Business Associate shall notify Covered Entity of such Breach without unreasonable delay, but in no event later than five (5) business days following the discovery of the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

5.2 Law Enforcement Delay. Notwithstanding the provisions of Section 5.1, above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then Business Associate shall immediately notify Covered Entity of such a requested delay and:

- a. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or
- b. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

5.3 Contents of Notification. The Breach notification provided to Covered Entity shall include, to the extent possible:

- a. the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;
- b. a brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
- c. a description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- d. any steps individuals should take to protect themselves from potential harm resulting from the Breach;
- e. a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breach; and

- f. contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

Business Associate shall provide the information specified in this Section to Covered Entity at the time of the Breach notification, if possible, or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in this Section, and shall provide such information to Covered Entity even if the information becomes available after the five (5) day period provided in Section 5.1, above.

SECTION 6. TERM AND TERMINATION

6.1 Term. The Term of this Agreement shall be effective as of the date first written above and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity hereunder and/or under the Services Agreement, is destroyed or returned to Covered Entity.

6.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach or violation hereof by Business Associate, Covered Entity shall have the right to immediately terminate this Agreement.

6.3 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate will return or destroy all PHI received from Covered Entity or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form, and shall retain no copies of such information. If such return or destruction is not feasible, as reasonably supported by competent records and other written evidence of Business Associate, Business Associate will extend the protections of this Agreement to the information retained and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

SECTION 7. MISCELLANEOUS PROVISIONS

7.1 Amendment. This Agreement cannot be amended except by the mutual written agreement of Business Associate and Covered Entity. In the event either party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HIPAA, such party shall so notify the other party in writing. For a period of up to thirty (30) days, the parties shall address in good faith such concern and shall amend the terms of this Agreement, if necessary, to bring it into compliance. If after such thirty (30) day period this Agreement fails to comply with HIPAA with respect to the concern(s) raised pursuant to this Section, then either party may terminate this Agreement upon written notice to the other party.

7.2 No Third Party Beneficiary Rights. This Agreement is intended for the sole benefit of Business Associate and Covered Entity and does not create any third-party beneficiary rights.

7.3 Independent Contractor Relationship. The parties agree that the legal relationship between Covered Entity and Business Associate is strictly an independent contractor relationship. Nothing in this Agreement shall be deemed to create a joint venture, agency, partnership, or employer-employee relationship between the parties.

7.4 Headings. The section headings contained in this Agreement are for reference purposes only and will not affect the meaning of this Agreement.

7.5 Survival. The rights and obligations of Business Associate under Section 6.3 of this Agreement shall survive the termination of this Agreement.

7.6 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA.

7.7 Waiver. Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.

7.8 Binding Effect. The Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

7.9 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

7.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

7.11 Integration. Except as provided in the Services Agreement, this Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes any and all written or oral agreements heretofore made, including, but not limited to, any business associate agreements previously entered into between the parties.

7.12 Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

7.13 Indemnification. Business Associate will indemnify, defend and hold harmless Covered Entity and Covered Entity's affiliates, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including costs for notification and mitigation related to Business Associate's breach of Unsecured PHI and any attorneys' fees and court proceeding costs) arising out of or relating to any use or disclosure of PHI not permitted by this Agreement, or any other breach of this Agreement, by Business Associate or its subcontractors, its agents, or any other persons or entities under the control of the Business Associate. This indemnification relates only to the obligations under this Agreement and liability related to HIPAA; it is separate and apart from any indemnification to which the parties may or may not have agreed in the Services Agreement or otherwise.

Business Associate _____ Date _____

Authorized Signature _____